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THE LAW
OF
TRAMWAYS & LIGHT RAILWAYS
IN
GREAT BRITAIN

(3rd Edition of Sutton's "Tramway Acts of the United Kingdom"):

COMPRISING

THE STATUTES RELATING TO TRAMWAYS AND LIGHT RAILWAYS IN ENGLAND AND SCOTLAND, WITH FULL NOTES; THE TRAMWAYS AND LIGHT RAILWAYS RULES; THE REGULATIONS, BY-LAWS AND MEMORANDA ISSUED BY THE BOARD OF TRADE; THE STANDING ORDERS OF PARLIAMENT; THE GENERAL ORDERS UNDER THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899; AND DISSERTATIONS ON LOCUS STANDI AND RATING.

BY

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¹⁾
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BARRISTER-AT-LAW,

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LONDON:

STEVENS AND SONS, LIMITED,

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Law Publishers.

1903

LONDON :
PRINTED BY C. F. ROWORTH, GREAT NEW STREET, E.C.

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To

HENRY SUTTON, Esq.,

JUNIOR COUNSEL TO THE TREASURY,

FOR MUCH KINDNESS.

PREFACE.



A BRANCH of law, which is the creation of statute, can best be treated by means of notes on the statutes which have created it. This method preserves the writer from discursiveness and the reader from confusion, and it has been adopted in this book.

Mr. Sutton's "Tramway Acts of the United Kingdom," which for many years held its ground as the only work on its subject, was first published in 1874, and reached a second edition in 1883. Since that date the general introduction of mechanical traction and the passing of the Light Railways Act, 1896, with its resultant effect on tramway matters, have almost entirely changed the condition of tramway law in this country. I have therefore found it impossible to retain any of Mr. Sutton's work but its plan. The text is new.

The original book contained the Irish Tramway Acts, which in 1883 were but five. Since then they have expanded into a code of fourteen Acts or portions of Acts, and the necessity of keeping this work within reasonable limits has compelled me to omit them. But, by way of compensation, I have endeavoured to deal as completely as possible with the law relating to tramways and light railways both in England and in Scotland, and have referred to a considerable number

of English and Scottish cases directly bearing on the subject, which have not been dealt with previously. The matter has also been illustrated by Irish, Colonial and American cases, where these seemed to be useful; in particular, with regard to electrical interference, a fairly full list of American authorities has been given. Further, I have endeavoured to present a connected discussion of the principles of *locus standi* in their application to my present subject, and to disentangle the details of tramway and light railway rating.

On details of light railway procedure I have made considerable reference to Mr. Oxley's useful reports in respect to the applications to which they extend, namely, those made up to May, 1899. The most recent variations in the standard sections of light railway orders have been incorporated, but these are still subject to frequent alteration.

My best thanks are due to Mr. J. G. WILLIS, of the Board of Trade, and to the officials of the Light Railway Commission for information courteously supplied.

G. S. R.

1, KING'S BENCH WALK, TEMPLE.

September 2, 1903.

CONTENTS.

	PAGE
TABLE OF CASES - - - - -	- xvii
TABLE OF PROCEEDINGS BEFORE THE COURT OF REFEREES, THE LIGHT RAILWAY COMMISSIONERS, THE BOARD OF TRADE, AND THE COMMISSIONERS APPOINTED UNDER THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899 - -	xlvi
TABLE OF STATUTES, MILITARY AND NAVAL TRAMWAY ORDERS, AND LIGHT RAILWAY ORDERS - - - - -	lvi
ADDENDA ET CORRIGENDA - - - - -	lxxvi

Part I.

TRAMWAYS AND LIGHT RAILWAYS.

CHAPTER I.

TRAMWAYS AND LIGHT RAILWAYS - - - - -	1
---------------------------------------	---

CHAPTER II.

LOCUS STANDI - - - - -	12
A. Locus Standi against Tramways Bills - - - - -	12
I. Of Railways - - - - -	13
(i) On the ground of competition - - - - -	13
(ii) On grounds other than competition - - - - -	17
II. Of Light Railways - - - - -	20
III. Of Frontagers - - - - -	21
IV. Of Inhabitants - - - - -	29
V. Of Landowners - - - - -	30
VI. Of Local Authorities - - - - -	31
VII. Of Gas and Water Companies - - - - -	35
VIII. Of Telephone Companies - - - - -	36
IX. Of Omnibus and Cab Proprietors - - - - -	36
X. Of Miscellaneous Petitioners - - - - -	37
B. Locus Standi of Tramways - - - - -	39
I. Against Tramway Bills - - - - -	39
II. Against Railway Bills - - - - -	42
III. Against other Bills - - - - -	44
C. Locus Standi on Applications for Light Railway Orders - -	45
D. Locus Standi on Applications for Scots Provisional Orders - -	47

CHAPTER III.

	PAGE
THE RATING OF TRAMWAYS AND LIGHT RAILWAYS - - - - -	49
I. Rateability - - - - -	49
II. Rateable Subjects - - - - -	56
III. Assessment - - - - -	58
A. Value - - - - -	58
(i) Value in General - - - - -	58
(ii) Value in Detail - - - - -	64
B. The Parochial Principle - - - - -	77

CHAPTER IV.

MISCELLANEOUS PROVISIONS AS TO TRAMWAYS AND LIGHT RAILWAYS	83
A. Provisions relating to Tramways - - - - -	83
B. Provisions relating to Light Railways - - - - -	87

Part II.

TRAMWAYS.

THE TRAMWAYS ACT, 1870.
(33 & 34 Vict. c. 78.)

Preliminary.

SECT.

1. Short title - - - - -	91
2. Limitation of Act - - - - -	91
3. Interpretation of terms - - - - -	92

PART I.

Provisional Orders authorising the Construction of Tramways.

4. By whom Provisional Orders may be obtained - - - - -	95
5. The Board of Trade may, in certain cases, dispense with the consent of local or road authority - - - - -	98
6. Notices and deposit of documents by promoters as in Schedule - - - - -	99
7. Power for Board of Trade to determine on application and on objection - - - - -	100
8. Power for Board of Trade to make Provisional Order, and form and contents thereof - - - - -	101
9. Regulations as to construction of tramways in towns - - - - -	102
10. Nature of traffic on tramway and tolls to be specified in Provisional Order - - - - -	106
11. Costs of Order - - - - -	107
12. Promoters to deposit 4l. per cent. on estimate in prescribed bank - - - - -	107
13. Publication of Provisional Order as in Schedule - - - - -	109
14. Confirmation of Provisional Order by Act of Parliament - - - - -	109
15. Incorporation of general Acts in Provisional Order - - - - -	111
16. Power of Board of Trade to revoke, amend, extend, or vary Provisional Order - - - - -	114
17. Power to authorise joint work - - - - -	115

SECT.	PAGE
18. Cesser of powers at expiration of prescribed time - - -	115
19. Local authority may lease or take tolls - - -	118
20. How expenses to be defrayed - - -	121
21. Metropolitan Board of Works [London County Council] may, for carrying Provisional Order into effect, create stock under Loans Act of 1869 - - -	124

PART II.

Construction of Tramways.

22. As to incorporation of Parts II. and III. of this Act and special Acts with Provisional Order - - -	125
23. Definition of "Special Act" - - -	125
24. Definition of "Promoters" - - -	126
25. Mode of formation of tramways - - -	132
26. Power to break up streets, &c. - - -	134
27. Completion of work and reinstatement of road - - -	140
28. Repair of part of road where tramway is laid - - -	142
29. Road authority and promoters may contract for paving roads on which tramways are laid - - -	146
30. Provisions as to gas and water companies - - -	148
31. For protection of sewers, &c. - - -	153
32. Rights of authorities and companies, &c. to open roads - - -	154
33. Difference between promoters and road authority, &c. - - -	157

PART III.

GENERAL PROVISIONS.

Carriages.

34. Power for promoters to use tramways with flange-wheeled carriages, &c. - - -	160
---	-----

Licences to use Tramways.

35. Licences to use the tramways may in certain events be granted to third parties by the Board of Trade - - -	165
36. In default of payment licensee's carriages may be detained and sold - - -	167
37. Licensees to give account of passengers carried by them - - -	168
38. Licensees not giving account of passengers carried, liable to penalty - - -	168
39. Disputes as to amount of toll to be settled by justices - - -	169
40. Licensees liable for damage done by their servants - - -	169

Discontinuance of Tramways.

41. Tramways to be removed in certain cases - - -	170
---	-----

Insolvency of Promoters.

42. Proceedings in case of insolvency of promoters - - -	172
--	-----

Purchase of Tramways.

43. Future purchase of undertaking by local authority - - -	175
44. Power of sale - - -	190

SECT.	<i>Tolls.</i>	PAGE
45. Tolls, &c.	- - - - -	- 193
	<i>By-laws.</i>	
46. By-laws by local authority. Promoters may make certain regulations	- - - - -	- 195
47. Penalties may be imposed by by-laws	- - - - -	- 203
48. Power to local authority to license carriages, drivers, conductors, &c.	- - - - -	- 204
	<i>Offences.</i>	
49. Penalty for obstruction of promoters in laying out tramways	-	- 209
50. Penalties for wilful injury or obstruction to tramways, &c.	-	- 210
51. Penalty on passengers practising frauds on the promoters	-	- 212
52. Transient offenders	- - - - -	- 214
53. Penalty for carrying dangerous goods on the tramways	-	- 219
54. Penalty for persons using tramways with carriages with flange wheels, &c.	- - - - -	- 222
	<i>Miscellaneous.</i>	
55. Promoters or lessees to be responsible for all damages	- -	- 223
56. Recovery of tolls, penalties, &c.	- - - - -	- 256
57. Promoters to have right of user only over roads	- -	- 259
58. <i>Arrangements between turnpike road trustees and promoters</i>	-	- 260
59. Reservations of rights of owners, &c. of mines	- - -	- 260
60. Reservation of powers of street authorities to widen, &c. roads	-	- 262
61. Power for local authority or police authorities to regulate traffic in roads	- - - - -	- 263
62. Reservation of right of public to use roads	- - - - -	- 264
63. Regulation of inquiries before referee appointed by the Board of Trade	- - - - -	- 264
64. Rules for carrying Act into effect	- - - - -	- 267
SCHED. A.		
Part I. Definitions of local authority and local rate	- -	- 269
Part II. Definitions of road authority in the metropolis	- -	- 270
Part III. Approval of application by local authority for a Provisional Order	- - - - -	- 271
SCHED. B. PROVISIONAL ORDERS.		
Part I. Advertisements in October or November of intended application	- - - - -	- 274
Part II. Deposit on or before 30th November	- - -	- 275
Part III. Deposit on or before 30th December	- - -	- 275
Part IV. Deposit and advertisement of Provisional Order when made	- - - - -	- 276
SCHED. C.		
Part I. Notice and deposit of lease by local authority	- -	- 277
Part II. Notice of by-laws	- - - - -	- 278

THE TRAMWAYS (SCOTLAND) ACT, 1861.

(24 & 25 Vict. c. 69.)

SECT.	PAGE
1. Short title - - - - -	- 279
2. Interpretation of terms - - - - -	- 279

Formation of Tramways on Turnpike Roads.

3. Special meeting of trustees may be called to consider the expediency of laying down tramways - - - - -	- 280
4. Trustees may remit to their surveyor or to an engineer to prepare plans of tramways and estimate of expense - - - - -	- 281
5. Plans and estimate to be laid before general or special meeting of trustees - - - - -	- 281
6. Tramways may be laid down according to plans - - - - -	- 282
7. Tramways to form part of roads - - - - -	- 282
8. Expense of forming and maintaining tramways, how to be defrayed - - - - -	- 282
9, 10. <i>Repealed</i> - - - - -	- 283
11. Trustees may make regulations for use of tramways - - - - -	- 283

Formation of Tramways on Statute-labour Roads.

12. Tramways may be formed on statute-labour roads - - - - -	- 283
13. Tramways to form part of roads - - - - -	- 284
14. Trustees may make regulations for use of tramways - - - - -	- 285
15. Tramways may be removed - - - - -	- 285
16. Tramways not to be laid down in burghs without consent of magistrates and council - - - - -	- 285
17. Tramways to be kept in constant good order, and trustees may acquire right to them when proposed to be removed - - - - -	- 286

THE MILITARY TRAMWAYS ACT, 1887.

(50 & 51 Vict. c. 65.)

1. Short title - - - - -	- 287
2. Extent of Act - - - - -	- 287
3. Power to Secretary of State to obtain Provisional Orders - - - - -	- 287
4. Provisions for protection for local and road authorities, and of the public - - - - -	- 288
5. Provisional Order may authorise acquisition of land - - - - -	- 289
6. As to use of tramways - - - - -	- 290
7. Penalties on persons injuring or obstructing tramways - - - - -	- 290
8. Secretary of State may make by-laws as to use of steam or mechanical power - - - - -	- 291
9. General provisions as to penalties - - - - -	- 291
10. Publication and confirmation of Provisional Order - - - - -	- 291
11. Provisional Order may be obtained by local authority, &c. for use of tramways - - - - -	- 293
12. Interpretation - - - - -	- 294

THE NAVAL WORKS ACT, 1899.

(62 & 63 Vict. c. 42.)

SECT.	PAGE
2. Powers of Admiralty with respect to tramways - - -	- 296
3. Short title - - - - -	- 296

THE PARLIAMENTARY DEPOSITS AND BONDS ACT, 1892.

(55 & 56 Vict. c. 27.)

1. Power to release deposits - - - - -	- 297
2. Power to cancel bonds - - - - -	- 302
3. Application to Scotland - - - - -	- 302
4. Application to Ireland - - - - -	- 303
5. Short title - - - - -	- 303

THE CONVEYANCE OF MAILS ACT, 1893.

(56 & 57 Vict. c. 38.)

1. Differences as to remuneration for conveyance of mails - -	- 304
2. Carriage of mails on tramways - - - - -	- 304
3. Carriage of mails on tramroads - - - - -	- 307
4. Determination of differences - - - - -	- 307
5. Definitions - - - - -	- 308
6. Short title - - - - -	- 309

THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND)
ACT, 1899.

(62 & 63 Vict. c. 47.)

Application for Provisional Order.

1. Application for Provisional Order. Notices - - -	- 310
2. Report by Chairmen that procedure should be by private Bill -	- 311

Appointment of and Inquiry by Commissioners.

3. When inquiry by Commissioners to be directed - - -	- 312
4. Formation of extra-parliamentary panel - - -	- 313
5. Formation of parliamentary panels. Appointment of Commis- sioners - - - - -	- 313
6. Sitzings of Commissioners- - - - -	- 315

Issue and Confirmation of Provisional Order.

7. Provision for unopposed Orders - - - - -	- 316
8. Provision for Orders opposed, or where inquiry held - -	- 317
9. Procedure on Confirmation Bills - - - - -	- 318

Supplemental.

SECT.	PAGE
10. Examination of witnesses, production of documents, &c. -	319
11. Powers of county councils, town councils, &c. under Act -	319
12. Officers, &c. of Commissioners - - - - -	320
13. Examiners - - - - -	320
14. Payment of expenses, &c. - - - - -	321
15. Provisions for General Orders. Fees - - - - -	321
16. Savings - - - - -	322
17. Buildings and objects of historical interest - - - - -	322
18. Definitions - - - - -	323
19. Commencement, short title, and extent - - - - -	323

BOARD OF TRADE RULES UNDER THE TRAMWAYS ACT, 1870 - -	324
With respect to Provisional Orders and other matters - -	324
With respect to the prolongation of time for the commencement or completion of works - - - - -	338

BOARD OF TRADE'S REQUIREMENTS IN CASES OF APPLICATION TO THEM FOR THEIR APPROVAL OF THE PLAN AND STATEMENT RE- LATING TO THE RAIL AND SUBSTRUCTURE OF A TRAMWAY - -	340
---	-----

BOARD OF TRADE'S MEMORANDUM AS TO CLEARANCE AND RAILS -	341
---	-----

FORMS OF PROOF OF COMPLIANCE WITH THE TRAMWAYS ACT AND RULES - - - - -	342
I. With respect to applications for Provisional Orders - -	342
II. With respect to the deposit and advertisement of Provisional Orders as made, and (where necessary) the deposit of amended plans - - - - -	350

REGULATIONS AND BY-LAWS MADE BY THE BOARD OF TRADE—	
For the use of steam or any mechanical power on tramways -	352
For the use of electric power on tramways and light railways -	356
For the overhead trolley system - - - - -	363
For the surface contact system - - - - -	368
For the conduit system - - - - -	368
For cable traction - - - - -	369

MEMORANDUM OF THE BOARD OF TRADE AS TO GUARD WIRES ON ELECTRIC TRAMWAYS - - - - -	371
--	-----

MODEL FORM OF BY-LAWS TO BE MADE BY A LOCAL AUTHORITY -	375
---	-----

MODEL FORM OF BY-LAWS AND REGULATIONS TO BE MADE BY A TRAMWAY COMPANY - - - - -	377
--	-----

FORM OF RETURN OF GENERAL ACCIDENTS - - - - -	380
---	-----

FORM OF RETURN OF ELECTRICAL ACCIDENTS - - - - -	381
--	-----

	PAGE
STANDING ORDERS OF PARLIAMENT RELATIVE TO PRIVATE BILLS AND BILLS FOR CONFIRMING PROVISIONAL ORDERS - - -	382
GENERAL ORDERS FOR THE REGULATION OF PROCEEDINGS UNDER AND IN PURSUANCE OF THE PRIVATE LEGISLATION PROCEDURE (SCOT- LAND) ACT, 1899 - - - - -	417
PRECEDENT OF A TRAMWAYS ORDERS CONFIRMATION ACT - -	423

Part III.

LIGHT RAILWAYS.

THE LIGHT RAILWAYS ACT, 1896.

(59 & 60 Vict. c. 48.)

SECT.

1. Establishment of Light Railway Commission - - -	449
2. Application for Orders authorising light railways - -	453
3. Powers of local authorities under Order - - -	454
4. Loans by Treasury - - - - -	457
5. Special advances by Treasury - - - - -	459
6. Limitation on amount of advance and provision of money by National Debt Commissioners - - - - -	462
7. Consideration of application by Light Railway Commissioners -	463
8. Submission of Order to Board of Trade for confirmation -	472
9. Consideration of Order by Board of Trade - - -	473
10. Confirmation of Order by Board of Trade - - -	477
11. Provisions which may be made by the Order - - -	478
12. Application of general Railway Acts - - - -	494
13. Mode of settling purchase-money and compensation for taking of land - - - - -	498
14. Payment of purchase-money or compensation - - -	500
15. Provisions as to Board of Trade in respect of local inquiries, rules, fees and expenses - - - - -	500
16. Expenses of local authorities - - - - -	501
17. Joint committees - - - - -	504
18. Working of ordinary railway as light railway - - -	504
19. Power of owners to grant land or advance money for a light railway - - - - -	505
20. Power to grant Crown lands - - - - -	508
21. Provision as to commons - - - - -	510
22. Preservation of scenery and objects of historical interest -	512
23. Junctions with existing railways - - - - -	513
24. Amendment of Order - - - - -	514
25. Provision as to telegraphs - - - - -	517
26. Application to Scotland - - - - -	518
27. Extent of Act - - - - -	522
28. Definitions - - - - -	522
29. Short title - - - - -	523
Sched. I. Mode of passing special resolutions - - -	524
Sched. II. Enactments relating to safety, &c. - - -	524
Sched. III. Joint committees - - - - -	525

THE LIGHT RAILWAY COMMISSIONERS (SALARIES)
ACT, 1901.

(1 Edw. 7, c. 36.)

SECT.	PAGE
1. Payment of salary to a second Commissioner - - -	- 526
2. Short title - - - - -	- 526

THE LIGHT RAILWAYS RULES, 1898 - - - - -	- 527
--	-------

THE LIGHT RAILWAYS (COSTS) RULES, 1898 - - - - -	- 538
--	-------

FORM OF PROOF OF COMPLIANCE WITH THE LIGHT RAILWAYS ACT AND RULES - - - - -	- 543
--	-------

PRECEDENTS OF LIGHT RAILWAY ORDERS :—

For a Light Railway of Class A. - - - - -	- 548
For a Light Railway of Class B. - - - - -	- 586
For Extensions - - - - -	- 638
For Deviations - - - - -	- 640
For Extension of Time - - - - -	- 642
For Abandonment - - - - -	- 644

INDEX - - - - -	- 647
-----------------	-------

TABLE OF CASES.

	PAGE
Abraham <i>v.</i> North Metropolitan Tramways Co. (1894), "Times" Newspaper, Mar. 22	- - - - - 243
Abrahams <i>v.</i> Deakin, (1891) 1 Q. B. 516; 60 L. J. Q. B. 238; 63 L. T. 690; 39 W. R. 183; 55 J. P. 212; 7 T. L. R. 117	- - - - - 217
Abrath <i>v.</i> North Eastern Railway Co. (1886), 11 A. C. 247; 55 L. J. Q. B. 457; 55 L. T. 63; 50 J. P. 659; 2 T. L. R. 416	- - - - - 215
Acton, Middlesex, Local Board, Ex parte (1888), "Times" Newspaper, Nov. 6	- - - - - 429
Adamson <i>v.</i> Edinburgh Street Tramways Co. (1872), 10 M. 533; 9 S. L. R. 369	- - - - - 105
Adamson <i>v.</i> Miller (1900), 44 So. J. 278; 16 T. L. R. 185	- - - - - 207
Alldred <i>v.</i> West Metropolitan Trams Co., (1891) 2 Q. B. 398; 60 L. J. Q. B. 631; 65 L. T. 138; 39 W. R. 609; 55 J. P. 824; 7 T. L. R. 609	- - - - - 143, 147, 231
Allen <i>v.</i> London & South Western Railway Co. (1870), L. R. 6 Q. B. 65; 40 L. J. Q. B. 55; 23 L. T. 612; 19 W. R. 127; 11 Cox, C. C. 621	- - - - - 217
Alston <i>v.</i> Herring (1856), 11 Ex. 822; 25 L. J. Ex. 177	- - - - - 222
Alton Railroad and Illumination Co. <i>v.</i> Foulds, 81 Ill. App. 322	- - - - - 240
Alty <i>v.</i> Farrell, (1896) 1 Q. B. 636; 65 L. J. M. C. 115; 74 L. T. 492; 60 J. P. 373; 18 Cox, C. C. 321; 12 T. L. R. 346	- - - - - 199
Ambler, Jeremiah, & Sons, Ltd. <i>v.</i> Bradford Corporation, (1902) 2 Ch. 585; 71 L. J. Ch. 744; 87 L. T. 217; 66 J. P. 708; 18 T. L. R. 758	- - - - - 245
Amesbury Union <i>v.</i> Wiltshire JJ. (1883), 10 Q. B. D. 480; 52 L. J. M. C. 64; 31 W. R. 521; 47 J. P. 184	- - - - - 144
Antrim (Earl of) <i>v.</i> Dobbs (1891) 30 L. R. I. 424	- - - - - 112
Apthorpe <i>v.</i> Edinburgh Street Tramways Co. (1882), 10 R. 344; 20 S. L. R. 256	- - - - - 201, 218, 251
Armstrong <i>v.</i> South London Tramways Co., Ltd. (1891). 64 L. T. 96; 55 J. P. 370; 7 T. L. R. 123	- - - - - 162
Armytage, In re (1880), 14 Ch. D. 379; 49 L. J. Bk. 60; 42 L. T. 443; 28 W. R. 924	- - - - - 181
Atkinson <i>v.</i> Newcastle and Gateshead Waterworks Co. (1877), 2 Ex. D. 441; 44 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794	- - - - - 142, 209
Attorney-General <i>v.</i> Ashbourne Recreation Ground Co., (1903) 1 Ch. 101; 72 L. J. Ch. 67; 87 L. T. 561; 51 W. R. 525; 67 J. P. 73; 1 L. G. R. 146; 19 T. L. R. 40	- - - - - 210, 258
Attorney-General <i>v.</i> Bournemouth Corporation, (1902) 2 Ch. 714; 71 L. J. Ch. 730; 87 L. T. 252; 51 W. R. 129; 18 T. L. R. 744	- - - - - 116, 117, 118, 178, 245, 299
Attorney-General <i>v.</i> Cambridge Consumers' Gas Co. (1868), L. R. 4 Ch. 71; 38 L. J. Ch. 94; 19 L. T. 508; 17 W. R. 145	- - - - - 137

	PAGE
Attorney-General <i>v.</i> Conduit Colliery Co., (1895) 1 Q. B. 301; 64 L. J. Q. B. 207; 15 R. 267; 71 L. T. 771; 43 W. R. 366; 59 J. P. 70; 11 T. L. R. 57 - - - - -	261
Attorney-General <i>v.</i> Eastbourne Corporation, (1901) 2 K. B. 773; (1902) 1 K. B. 403; 70 L. J. K. B. 1046; 71 L. J. K. B. 181; 85 L. T. 745; 50 W. R. 161; 66 J. P. 36; 18 T. L. R. 122 - - -	191
Attorney-General <i>v.</i> Folkestone Corporation (1903), "Times" Newspaper, April 29 - - - - -	112
Attorney-General <i>v.</i> Gas Light & Coke Co. (1877), 7 Ch. D. 217; 47 L. J. Ch. 534; 37 L. T. 746; 26 W. R. 125 - - - - -	226
Attorney-General <i>v.</i> Great Eastern Railway Co. (1872), L. R. 7 Ch. 475; L. R. 6 H. L. 307; 41 L. J. Ch. 505; 26 L. T. 749; 20 W. R. 599; 22 W. R. 281 - - - - -	127
Attorney-General <i>v.</i> Great Eastern Railway Co. (1880), 11 Ch. D. 449; 5 A. C. 473; 48 L. J. Ch. 428; 49 L. J. Ch. 545; 40 L. T. 265; 42 L. T. 810; 27 W. R. 759; 28 W. R. 769 - - - - -	120, 132, 192
Attorney-General <i>v.</i> Hanwell Urban District Council, (1900) 2 Ch. 377; 69 L. J. Ch. 626; 82 L. T. 778; 48 W. R. 690; 16 T. L. R. 452 - - - - -	132
Attorney-General for Ontario <i>v.</i> Hamilton Street Railway Co. (1895), 27 Ont. R. 49 - - - - -	162
Attorney-General for Ontario <i>v.</i> Hamilton Street Railway Co. (1903), 19 T. L. R. 612 - - - - -	162
Attorney-General <i>v.</i> Hastings Corporation (1902), 19 T. L. R. 9 - - -	97
Attorney-General <i>v.</i> Logan, (1891) 2 Q. B. 100; 65 L. T. 162; 55 J. P. 615; 7 T. L. R. 279 - - - - -	132, 261
Attorney-General <i>v.</i> London & North Western Railway Co., (1900) 1 Q. B. 78; 69 L. J. Q. B. 26; 81 L. T. 649; 63 J. P. 772; 16 T. L. R. 30 - - - - -	132
Attorney-General <i>v.</i> London County Council, (1901) 1 Ch. 781; (1902) A. C. 165; 70 L. J. Ch. 367; 71 L. J. Ch. 268; 86 L. T. 161; 50 W. R. 497; 66 J. P. 340; 18 T. L. R. 298 - - - - -	132
Attorney-General <i>v.</i> Margate Pier & Harbour Co., (1900) 1 Ch. 749; 69 L. J. Ch. 331; 82 L. T. 448; 48 W. R. 518; 64 J. P. 405 - - -	245
Attorney-General <i>v.</i> Mid-Kent Railway Co. and South Eastern Railway Co. (1867), L. R. 3 Ch. 100; 16 W. R. 258 - - - - -	126
Attorney-General <i>v.</i> North Metropolitan Tramways Co. (1873), "Times" Newspaper, Nov. 3, Dec. 10, Dec. 18 - - - - -	138
Attorney-General <i>v.</i> North Metropolitan Tramways Co., (1892) 3 Ch. 78; 61 L. J. Ch. 693 - - - - -	180
Attorney-General <i>v.</i> North Metropolitan Tramways Co. (1895), 72 L. T. 340 - - - - -	251
Attorney-General <i>v.</i> Rufford, (1899) 1 Ch. 537; 68 L. J. Ch. 179; 80 L. T. 17; 47 W. R. 405; 63 J. P. 232; 15 T. L. R. 152 - - -	25
Attorney-General <i>v.</i> Sheffield Gas Consumers' Co. (1853), 3 De G. M. & G. 304; 22 L. J. Ch. 811; 17 Jur. 677; 1 W. R. 185 - - -	137
Attorney-General <i>v.</i> Southall, Ealing and Shepherd's Bush Tramways Co. (1874), "Times" Newspaper, July 10 - - - - -	134
Attorney-General <i>v.</i> Swansea Tramways Co. (1878), "Times" Newspaper, June 20 - - - - -	165
Attorney-General <i>v.</i> Toronto Street Railway Co. (1868), 14 Upp. Can. Ch. 673; 15 Upp. Can. Ch. 187 - - - - -	133, 134
Badcock <i>v.</i> Sankey (1896), 54 J. P. 564 - - - - -	207
Baddeley <i>v.</i> Gingell (1847), 1 Ex. 319 - - - - -	104

	PAGE
<i>Bagnell v. Carlton</i> (1877), 6 Ch. D. 371; 47 L. J. Ch. 30; 37 L. T. 481; 26 W. R. 243 - - - - -	130
<i>Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.</i> , (1902) 1 Ch. 146; 71 L. J. Ch. 158; 85 L. T. 652; 50 W. R. 177; 9 Manson, 56; 18 T. L. R. 161 - - - - -	127
<i>Baily v. De Crespigny</i> (1869), L. R. 4 Q. B. 180; 38 L. J. Q. B. 98; 19 L. T. 681; 17 W. R. 494 - - - - -	225
<i>Baird v. South London Tramways Co.</i> (1886), 2 T. L. R. 756 - 248, 249	
<i>Baker, Lees & Co., In re</i> , (1903) 1 K. B. 189; 72 L. J. K. B. 136; 87 L. T. 662; 51 W. R. 246; 19 T. L. R. 113 - - - - -	131
<i>Bank of New South Wales v. Owston</i> (1879), 4 A. C. 270; 48 L. J. P. C. 25 - - - - -	216, 217
<i>Banton v. Davies</i> (1891), 17 Cox, C. C. 469; 66 L. T. 192; 56 J. P. 294 - - - - -	208
<i>Barber v. Penley</i> , (1893) 2 Ch. 447; 62 L. J. Ch. 623; 3 R. 489; 68 L. T. 662; 9 T. L. R. 359 - - - - -	137
<i>Barham v. Ipswich Dock Commissioners</i> (1885), 54 L. T. 23 - 139, 231	
<i>Barnett v. Poplar Borough</i> , (1901) 2 K. B. 319; 70 L. J. K. B. 698; 84 L. T. 845; 49 W. R. 574; 17 T. L. R. 461 - - 143, 147, 231	
<i>Barry v. Dublin United Tramways Co.</i> (1890), 26 L. R. I. 150 - - 219	
<i>Barry v. Midland Railway</i> (1867), I. R. 1 C. L. 130 - - 202, 216	
<i>Bartlett v. West Metropolitan Tramways Co.</i> , (1893) 3 Ch. 437; (1894) 2 Ch. 286; 63 L. J. Ch. 208, 519; 70 L. T. 491; 42 W. R. 500; 8 R. 259; 1 Manson, 272 - - - - -	175
<i>Barton-upon-Humber and District Water Co., In re</i> (1889), 42 Ch. D. 585; 58 L. J. Ch. 613; 61 L. T. 803; 38 W. R. 8 - - - - -	174
<i>Basingstoke Canal, Proprietors of the, In re</i> (1866), 14 W. R. 956 - 174	
<i>Batchelor v. London General Omnibus Co.</i> (1901), "Times" News- paper, June 6 - - - - -	250
<i>Bathgate v. Caledonian Railway Co.</i> (1902), 4 F. 313; 39 S. L. R. 246; 9 S. L. T. 280; (1903), W. N. 161 - - - - -	255
<i>Bathurst, Borough of, v. Macpherson</i> (1879), 4 A. C. 256; 48 L. J. P. C. 61 - - - - -	209
<i>Batting v. Bristol and Exeter Railway Co.</i> (1861), 3 L. T. 665; 9 W. R. 271 - - - - -	211
<i>Bayley v. Manchester, Sheffield and Lincolnshire Railway Co.</i> (1873), L. R. 7 C. P. 415; L. R. 8 C. P. 148; 42 L. J. C. P. 78; 28 L. T. 366 - - - - -	242
<i>Beard v. London General Omnibus Co.</i> , (1900) 2 Q. B. 530; 69 L. J. Q. B. 895; 83 L. T. 362; 48 W. R. 658; 16 T. L. R. 499 - - 247	
<i>Beardmer v. London and North Western Railway Co.</i> (1849), 1 Mac. & G. 112; 1 H. & Tw. 161; 5 Rail. Cas. 728; 18 L. J. Ch. 432; 13 Jur. 327 - - - - -	127
<i>Beattie v. Edinburgh Northern Tramways Co.</i> (1891), 28 S. L. R. 763 - 131	
<i>Belfast Street Tramways Co. v. Commissioner of Valuation</i> (1895), 29 Ir. L. T. R. 138 - - - - -	72
<i>Bell v. Stockton and Darlington Steam Tramways Co.</i> (1887), 51 J. P. 804; 3 T. L. R. 511 - - - - -	165, 197, 353
<i>Bell Telephone Co. v. Montreal Street Railway Co.</i> (1897), Quebec Rapp. Jud. 6 B. R. 223 - - - - -	240
<i>Belmore (Countess of) v. Kent County Council</i> , (1901) 1 Ch. 873; 70 L. J. Ch. 501; 84 L. T. 523; 49 W. R. 459; 65 J. P. 456; 17 T. L. R. 360 - - - - -	482
<i>Beman v. Rufford</i> (1851), 1 Sim. (N. S.) 550; 20 L. J. Ch. 537; 15 Jur. 914 - - - - -	192

	PAGE
Bentham <i>v.</i> Hoyle (1878), 3 Q. B. D. 289; 47 L. J. M. C. 51; 37 L. T. 753; 26 W. R. 314 - - - - -	214
Bernina, The (1888), 13 A. C. 1; 57 L. J. P. 65; 51 L. T. 423; 36 W. R. 870; 6 Asp. M. C. 257; 4 T. L. R. 360 - - -	250
Betts <i>v.</i> De Vitre (1868), L. R. 3 Ch. 441; 37 L. J. Ch. 325; 18 L. T. 165; 16 W. R. 529; 5 N. R. 165 - - - - -	242
Bidder <i>v.</i> North Staffordshire Railway Co. (1878), 4 Q. B. D. 412; 48 L. J. Q. B. 248; 40 L. T. 801; 27 W. R. 540 - - -	113
Bideford Urban District Council <i>v.</i> Bideford, Westward Ho! and Appledore Railway Co. (1903), "Times" Newspaper, July 9 103, 159	
Birkenhead Docks Trustees <i>v.</i> Laird (1854), 4 De G. M. & G. 732; 23 L. J. Ch. 457; 18 Jur. 883; 2 W. R. 7 - - - - -	138
Birmingham, Dudley and District Banking Co. <i>v.</i> Ross (1888), 38 Ch. D. 295; 57 L. J. Ch. 601; 36 W. R. 914; 4 T. L. R. 108 -	113
Birmingham and Lichfield Junction Railway Co., In re (1885), 28 Ch. D. 352; 54 L. J. Ch. 580; 52 L. T. 729; 33 W. R. 517; 1 T. L. R. 241 - - - - -	108
Biscoe <i>v.</i> Great Eastern Railway Co. (1873), L. R. 16 Eq. 636; 21 W. R. 902 - - - - -	227
Bishop <i>v.</i> North (1843), 11 M. & W. 418; 3 Rail. Cas. 459; 12 L. J. Ex. 362 - - - - -	113
Bissill <i>v.</i> Bradford Tramways Co., Ltd. (1891), W. N. 51; "Times" Newspaper, Mar. 7 - - - - -	175
Bissill <i>v.</i> Bradford Tramways Co. (1893), 9 T. L. R. 337 - - -	175
Black <i>v.</i> Christchurch Finance Co., (1894) A. C. 48; 63 L. J. P. C. 32; 6 R. 394; 70 L. T. 77; 58 J. P. 332 - - - - -	232
Black <i>v.</i> Neilson (1897), 2 Adam Just. Ca. 424; 25 R. 98; 35 S. L. R. 258; 5 S. L. T. 298 - - - - -	161, 207, 208
Blake <i>v.</i> Shaw (1860), Johns. 732; 8 W. R. 410 - - - - -	181
Blaker <i>v.</i> Herts and Essex Waterworks Co. (1889), 41 Ch. D. 399; 58 L. J. Ch. 497; 1 Meg. 217; 60 L. T. 776; 37 W. R. 601; 5 T. L. R. 421 - - - - -	175, 179
Borough of Bathurst <i>v.</i> Macpherson (1879), 4 A. C. 256; 48 L. J. P. C. 61 - - - - -	209
Borough of Portsmouth (Kingston, Fratton and Southsea) Tram- ways Co., In re, (1892) 2 Ch. 362; 61 L. J. Ch. 462; 66 L. T. 671; 40 W. R. 553 - - - - -	174
Bound <i>v.</i> Lawrence, (1892) 1 Q. B. 226; 61 L. J. M. C. 21; 65 L. T. 844; 40 W. R. 1; 56 J. P. 118; 8 T. L. R. 1 - - - - -	254
Bower <i>v.</i> Peate (1876), 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. 321-	232
Boyce <i>v.</i> Paddington Borough Council, (1903) 1 Ch. 109; 72 L. J. Ch. 28; 87 L. T. 564; 51 W. R. 109; 67 J. P. 23; 1 L. G. R. 98; on appeal (1903), W. N. 143; 72 L. J. Ch. 695; 19 T. L. R. 38, 648	229
Boyd <i>v.</i> Portland Electric Co. (1901, Or.), 66 Pac. Rep. 576 - - -	240
Bradford and District Tramways Co., Ex parte, (1893) 3 Ch. 463; 62 L. J. Ch. 668; 3 R. 640; 69 L. T. 131; 9 T. L. R. 502 - - -	181, 301
Bradford Navigation Co., In re (1870), L. R. 10 Eq. 331; 39 L. J. Ch. 161; 18 W. R. 592 - - - - -	174
Bradford Tramways Co., In re (1876), 4 Ch. D. 18; 46 L. J. Ch. 89; 35 L. T. 827; 25 W. R. 88 - - - - -	108, 302
Brampton and Longtown Railway Co., In re, Addison's Case (1875), L. R. 20 Eq. 620; 44 L. J. Ch. 537; 32 L. T. 592; 24 W. R. 113	130
Brampton and Longtown Railway Co., In re, Shaw's Claim (1875), L. R. 10 Ch. 177; 44 L. J. Ch. 670; 33 L. T. 5; 23 W. R. 813 -	130
Brass <i>v.</i> Maitland (1856), 6 E. & B. 470; 26 L. J. Q. B. 49; 2 Jur. (N. S.) 710; 4 W. R. 647- - - - -	221, 222

	PAGE
<i>Brazier v. Glasspool</i> (1901), W. N. 237; (1902) W. N. 162	- 113
<i>Brennan v. Dublin United Tramways Co.</i> , (1901) 2 I. R. 241; 34 Ir. L. T. R. 113	- 255
<i>Brentford v. Isleworth Tramways Co.</i> , In re (1884), 26 Ch. D. 527; 53 L. J. Ch. 624; 50 L. T. 580; 32 W. R. 895	- 174, 253
<i>Brentford Urban District Council v. London United Tramways, Ltd.</i> (1901), 45 So. J. 408; "Times" Newspaper, Mar. 30	140, 152, 154
<i>Brian v. Aylward</i> (1902), 18 T. L. R. 371	- 160, 206, 207
<i>Bridge v. Grand Junction Railway Co.</i> (1838), 3 M. & W. 244	- 243
<i>Bristol Governors of the Poor v. Wait</i> (1836), 5 A. & E. 1; 6 N. & M. 383; 5 L. J. (N. S.) M. C. 113	- 54
<i>Bristol Trams and Carriage Co., Ltd. v. Bristol Corporation</i> (1890), 25 Q. B. D. 427; 59 L. J. Q. B. 441; 63 L. T. 177; 38 W. R. 693; 55 J. P. 53; 6 T. L. R. 371	- 144, 158, 159, 262
<i>Bristol Tramways Co., Ltd. v. Grindell</i> (1887), "Times" Newspaper, Dec. 22	- 163
<i>Bristol Tramways and Carriage Co. v. National Telephone Co.</i> , (1899) 2 Ch. 282; 68 L. J. Ch. 566; 42 So. J. 729; 15 T. L. R. 430	- 157
<i>British Electric Traction Co., Ltd. v. Inland Revenue Commissioners</i> (1900), 64 J. P. 805; 17 T. L. R. 92	- 119
<i>Briton Medical and General Life Assurance Association</i> , In re (1886), 32 Ch. D. 503; 2 T. L. R. 344	- 257
<i>Broadbent v. Imperial Gas Light Co.</i> (1856), 7 De G. M. & G. 436; 7 H. L. C. (11 E. R.) 600; 26 L. J. Ch. 276; 29 L. J. Ch. 377	- 111, 112, 142
<i>Brocklehurst v. Manchester, Bury, Rochdale and Oldham Steam Tramways Co.</i> (1886), 17 Q. B. D. 118; 55 L. T. 406; 34 W. R. 568; 51 J. P. 55	- 223
<i>Brodie v. North British Railway Co.</i> (1900), 3 F. 75; 38 S. L. R. 38; 8 S. L. T. 203	- 253
<i>Brown v. Great Eastern Railway Co.</i> (1877), 2 Q. B. D. 406; 46 L. J. M. C. 231; 36 L. T. 767; 25 W. R. 792	- 203
<i>Brown v. Holyhead Local Board</i> (1862), 1 H. & C. 601; 32 L. J. Ex. 25; 7 L. T. 332; 11 W. R. 71	- 199
<i>Brownlow v. Metropolitan Board of Works</i> (1864), 16 C. B. (N. S.) 546; 33 L. J. C. P. 233; 12 W. R. 871	- 232
<i>Bryce v. Glasgow Tramway Co.</i> (1898), 6 S. L. T. 68	- 247
<i>Buckbee v. Third Avenue Railroad Co.</i> (1901), 72 N. Y. S. 217; 64 App. Div. 360	- 241
<i>Burnley Corporation v. Lancashire County Council</i> (1889), 54 J. P. 279	- 144
<i>Burns v. Cork and Bandon Railway Co.</i> (1862), 13 Ir. C. L. 543; 15 Ir. Jur. 71	- 235
<i>Burrows v. London General Omnibus Co.</i> (1894), 10 T. L. R. 298	- 248
<i>Burton v. Salford Corporation</i> (1883), 11 Q. B. D. 286; 52 L. J. Q. B. 668; 49 L. T. 43	- 205
<i>Busby v. Leeds Corporation</i> (1872), 52 L. T. Newspaper, 289	- 145, 156
<i>Buzby v. Philadelphia Traction Co.</i> (1889), 126 Pa. 559	- 249
<i>Byrne v. Londonderry Tramway Co.</i> , (1902) 2 I. R. 457	- 247
<i>Bywell Castle, The</i> (1879), 4 P. D. 219; 41 L. T. 747; 28 W. R. 293; 4 Asp. M. C. 207	- 243

	PAGE
Calder and Hebble Navigation Co. v. Pilling (1845), 14 M. & W. 76; 3 Rail. Cas. 735; 14 L. J. Ex. 223; 9 Jur. 377	- 200
Caledonian Canal Commissioners v. Argyll County Council (1894), 22 R. 149; 31 S. L. R. 830	- 522
Caledonian Railway Co. v. Edinburgh Magistrates (1901), 3 F. 645; 38 S. L. R. 452; 8 S. L. T. 400	- 104
Caledonian, &c. Railway Co. v. Helensburgh Magistrates (1855), 2 Macq. 391; 19 D. (H. L.) 6; Paterson, 642	- 128
Caledonian Railway Co. v. Walker's Trustees (1882), 7 A. C. 259; 46 L. T. 826; 30 W. R. 569; 46 J. P. 676; 9 R. (H. L.) 19; 19 S. L. R. 578	- 224
Cameron v. Patent Cable Tramways Corporation, Ltd. (1885), "Times" Newspaper, April 22; (1886), Jan. 14	- 141, 231
Campbell v. Edinburgh Magistrates (1891), 19 R. 159; 29 S. L. R. 146	- 104
Canadian Pacific Railway Co. v. Parke, (1899) A. C. 535; 68 L. J. P. C. 89; 81 L. T. 127; 48 W. R. 118; 15 T. L. R. 427	- 226
Cannan v. Earl of Abingdon, (1900) 2 Q. B. 66; 69 L. J. Q. B. 517; 82 L. T. 382; 48 W. R. 470; 64 J. P. 504; 16 T. L. R. 318	- 197
Carden v. General Cemetery Co. (1839), 5 Bing. (N. C.) 253; 8 L. J. (N. S.) C. P. 163; 7 Scott, 97; 7 D. P. C. 275	- 129
Carington v. Wycombe Railway Co. (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213; 18 L. T. 96; 16 W. R. 494	- 103
Caron v. Cité de St. Henri (1896), Quebec Rapp. Jud. 9 C. S. 490	- 241
Cates v. Knight (1789), 3 T. R. 442	- 258
Central Pennsylvania Telephone Co. v. Wilkesbarre, &c. Railroad Co. (1892), 6 Kulp, 383; 1 Pa. Dist. R. 628	- 239
Chadwick v. Marsden (1867), L. R. 2 Ex. 285; 36 L. J. Ex. 177; 16 L. T. 666; 15 W. R. 964	- 499
Chamberlain & Hookham, Ltd. v. Bradford Corporation (1900), 83 L. T. 518; 64 J. P. 806; 17 T. L. R. 62	- 245
Chambers, Ex parte, (1893) 1 Ch. 47; 62 L. J. Ch. 78; 67 L. T. 647; 41 W. R. 170	- 299
Chaplin v. Westminster Corporation, (1901) 2 Ch. 329; 70 L. J. Ch. 679; 85 L. T. 88; 49 W. R. 586; 17 T. L. R. 576	- 228
Chapman v. Pickersgill (1762), 2 Wils. K. B. 145	- 210
Charleston v. London Tramways Co. (1888), 36 W. R. 367; 32 So. J. 557; 4 T. L. R. 157, 629	- 217, 218, 246
Chartered Institute of Patent Agents v. Lockwood, (1894) A. C. 347; 6 R. 219; 63 L. J. P. C. 74; 71 L. T. 205; 10 T. L. R. 527; 21 R. (H. L.) 61; 31 S. L. R. 942	- 478
Chelsea Waterworks Co. v. Bowley (1851), 17 Q. B. 358; 20 L. J. Q. B. 520; 15 Jur. 1129	- 51
Chidley v. West Ham Overseers (1874), 32 L. T. 486; 39 J. P. 310	- 58
Chilton v. London and Croydon Railway Co. (1847), 16 M. & W. 212; 5 Rail. Cas. 4; 16 L. J. Ex. 89; 11 Jur. 149	- 216
Chisholm v. Doulton (1889), 22 Q. B. D. 736; 58 L. J. M. C. 133; 60 L. T. 966; 37 W. R. 749; 16 Cox, C. C. 675; 53 J. P. 550; 5 T. L. R. 437	- 201, 221
Cincinnati Inclined Plane Railroad Co. v. City and Suburban Tele- graph Association, 48 Ohio St. R. 390	- 239
City of Denver v. Sherrett (1898, U. S. C. C. Colo.), 88 Fed. Rep. 226; 60 U. S. App. 104	- 240
City of Kingston v. Kingston, Portsmouth and Cataraqui Electric Railway Co. (1897), 28 Ont. R. 399	- 260

	PAGE
City of London Contract Corporation <i>v.</i> Coventry and District Tramways Co. (1892), not reported - - - - -	175
City of Montreal <i>v.</i> Montreal Street Railway Co. (1903), 19 T. L. R. 368 - - - - -	234
City of Oxford Tramway Co. <i>v.</i> Sankey (1890), 54 J. P. 52; 6 T. L. R. 151 - - - - -	207
City and South London Rail. Co. and St. Mary Woolnoth, In re (1903), 67 J. P. 221; 19 T. L. R. 363 - - - - -	184
Clark <i>v.</i> Denton (1830), 1 B. & Ad. 92; 8 L. J. (O. S.) K. B. 333 -	200
Clarke <i>v.</i> Alderbury Union (1880), 6 Q. B. D. 139; 50 L. J. M. C. 33; 29 W. R. 334; 45 J. P. 358 - - - - -	62
Clegg, Parkinson & Co. <i>v.</i> Earby Gas Co. (1896), 1 Q. B. 592; 65 L. J. Q. B. 339; 44 W. R. 606; 12 T. L. R. 241 - - - - -	209
Clogher Valley Tramway Co., Ltd. <i>v.</i> R. (1891), 30 L. R. I. 316 - 88, 106, 252, 309	
Colchester Tramways Co., In re, (1893) 1 Ch. 309; 62 L. J. Ch. 243; 3 R. 168; 67 L. T. 846; 41 W. R. 169 - - - - -	300, 301, 336
Collier <i>v.</i> Worth (1876), 1 Ex. D. 464; 35 L. T. 345 - - - - -	103
Collman <i>v.</i> Mills, (1897) 1 Q. B. 396; 66 L. J. Q. B. 170; 75 L. T. 590; 18 Cox, C. C. 481; 61 J. P. 102; 13 T. L. R. 122 - - -	201, 244
Commissioners of Police <i>v.</i> Cartman, (1896) 1 Q. B. 655; 65 L. J. M. C. 113; 74 L. T. 726; 44 W. R. 637; 18 Cox, C. C. 341; 60 J. P. 357; 12 T. L. R. 334 - - - - -	244
Commissioner for Railways <i>v.</i> Toohey (1884), 9 A. C. 720; 53 L. J. P. C. 91; 51 L. T. 582 - - - - -	165, 247
Common Road Conveyance Co., Ltd., In re, not reported - - -	109
Company or Fraternity of Free Fishermen of Faversham, In re (1887), 36 Ch. D. 329; 57 L. J. Ch. 187; 57 L. T. 577; 3 T. L. R. 797 -	174
Cook <i>v.</i> London Tramways Co. (1886), "Times" Newspaper, June 23	219
Cook <i>v.</i> North Metropolitan Tramways Co. (1887), 18 Q. B. D. 683; 56 L. J. Q. B. 309; 56 L. T. 448; 57 L. T. 476; 35 W. R. 577; 51 J. P. 630; 3 T. L. R. 523 - - - - -	254
Cook <i>v.</i> North Metropolitan Tramways Co. (1889), 6 T. L. R. 22 -	251
Cooper <i>v.</i> Slade (1858), 6 H. L. C. (10 E. R.) 746; 27 L. J. Q. B. 449; 4 Jur. (N. S.) 791; 6 W. R. 461 - - - - -	243
Cooper <i>v.</i> Whittingham (1880), 15 Ch. D. 501; 49 L. J. Ch. 752; 43 L. T. 16; 28 W. R. 720 - - - - -	210, 258
Cornford <i>v.</i> Carlton Bank, (1899) 1 Q. B. 392; (1900) 1 Q. B. 22; 68 L. J. Q. B. 196, 1020; 80 L. T. 121; 81 L. T. 415; 16 T. L. R. 12 - - - - -	215
Cornwall Minerals Railway Co., In re (1882), 48 L. T. 41 - - -	68
Cottam <i>v.</i> Guest (1880), 6 Q. B. D. 79; 50 L. J. Q. B. 174; 29 W. R. 305; 45 J. P. 95 - - - - -	163, 222, 264
Cotterill <i>v.</i> Lemprière (1890), 24 Q. B. D. 634; 58 L. J. M. C. 133; 62 L. T. 695; 17 Cox, C. C. 97; 54 J. P. 583; 6 T. L. R. 262 -	354
Cousins <i>v.</i> Stockbridge (1866), 30 J. P. 166 - - - - -	206
Coventry <i>v.</i> London, Brighton and South Coast Rail. Co. (1867), L. R. 5 Eq. 104; 37 L. J. Ch. 90; 17 L. T. 368; 16 W. R. 267 -	103
Coventry and Nuneaton Tramways Co., In re (1888), 4 T. L. R. 458 -	301
Cowley <i>v.</i> Newmarket Local Board, (1892) A. C. 345; 62 L. J. Q. B. 65; 1 R. 45; 67 L. T. 486; 56 J. P. 805; 8 T. L. R. 788 - - -	147
Cox <i>v.</i> Edinburgh Tramways Co. (1898), 6 S. L. T. 86 - - -	188
Craig <i>v.</i> Edinburgh Street Tramways Co. (1874), 1 R. 947; 11 S. L. R. 541 - - - - -	51

	PAGE
<i>Cray v. Metropolitan Tramways Co., Ltd.</i> (1873), "Times" Newspaper, June 21 - - - - -	249
<i>Crockett and Jones v. Northampton Union Assessment Committee</i> (1902), 18 T. L. R. 451 - - - - -	58
<i>Croft v. Alison</i> (1821), 4 B. & A. 590 - - - - -	242
<i>Cumberland Telephone and Telegraph Co. v. United Electric Rail.</i> Co. (1890, U. S. C. C. Tenn.), 42 Fed. Rep. 273 - - - - -	239
<i>Cumberland Telephone and Telegraph Co. v. United Electric Rail.</i> Co. (1895), 93 Tenn. 492 - - - - -	239
<i>Cundy v. Lecoq</i> (1884), 13 Q. B. D. 207; 53 L. J. M. C. 125; 51 L. T. 265; 32 W. R. 769; 48 J. P. 599 - - - - -	221
<i>Curtis v. Embery</i> (1872), L. R. 7 Ex. 369; 42 L. J. M. C. 39; 21 W. R. 143 - - - - -	204
<i>Curtis v. Kesteven County Council</i> (1890), 45 Ch. D. 504; 60 L. J. Ch. 103; 63 L. T. 543; 39 W. R. 199 - - - - -	482
<i>Cutbill v. Shropshire Rail. Co.</i> (1891), W. N. 65; 7 T. L. R. 381 - - -	130
<i>Dalton v. Angus</i> (1881), 6 A. C. 740; 50 L. J. Q. B. 689; 44 L. T. 844; 30 W. R. 191 - - - - -	230, 232
<i>Dand v. Kingscote</i> (1840), 6 M. & W. 174; 2 Rail. Cas. 27; 9 L. J. Ex. 279 - - - - -	112
<i>Davies v. Harvey</i> (1874), L. R. 9 Q. B. 433; 43 L. J. M. C. 121; 30 L. T. 629; 22 W. R. 733 - - - - -	197
<i>Davis v. Greenwich District Board of Works</i> , (1895) 2 Q. B. 219; 14 R. 552; 64 L. J. M. C. 257; 72 L. T. 674; 59 J. P. 517 - - -	25
<i>Davis v. Loach</i> (1886), 50 J. P. 212 - - - - -	354
<i>Davison v. Gillies</i> (1879), 16 Ch. D. 347 n.; 50 L. J. Ch. 192 n.; 44 L. T. 92 n. - - - - -	188
<i>Daw v. Metropolitan Board of Works</i> (1862), 12 C. B. (N. S.) 161; 31 L. J. C. P. 223; 8 Jur. (N. S.) 1040; 6 L. T. 353 - - - - -	138
<i>Dearden v. Townsend</i> (1865), L. R. 1 Q. B. 10; 35 L. J. M. C. 50; 12 Jur. (N. S.) 120; 13 L. T. 323; 14 W. R. 52 - - - - -	213, 214
<i>Delany v. Dublin United Tramways Co., Ltd.</i> (1892), 30 L. R. I. 725; 26 Ir. L. T. R. 122 - - - - -	243, 248
<i>Dent v. London Tramways Co., Ltd.</i> (1880), 16 Ch. D. 344; 50 L. J. Ch. 190; 44 L. T. 91 - - - - -	188
<i>Denver (City of) v. Sherrett</i> (1898, U. S. C. C. Colo.), 88 Fed. Rep. 226; 60 U. S. App. 104 - - - - -	240
<i>Derby County Council v. Matlock Bath Urban District Council</i> , (1896) A. C. 315; 65 L. J. Q. B. 419; 74 L. T. 595; 60 J. P. 676; 12 T. L. R. 350 - - - - -	94
<i>Derbyshire v. Houliston</i> , (1897) 1 Q. B. 772; 66 L. J. Q. B. 569; 76 L. T. 624; 45 W. R. 527; 61 J. P. 374; 13 T. L. R. 377 - - -	221
<i>Detroit Railway Co. v. Mills</i> (1891), 85 Mich. 634 - - - - -	229
<i>Devonport Corporation v. Plymouth, Devonport and District Tram-</i> <i>ways Co.</i> (1884), 52 L. T. 161; 49 J. P. 405 - - - - -	117, 126, 134
<i>Devonport Corporation v. Tozer</i> , (1902) 2 Ch. 182; (1903) 1 Ch. 759; 71 L. J. Ch. 754; 72 L. J. Ch. 411; 88 L. T. 113; 67 J. P. 269; 1 L. G. R. 421; 19 T. L. R. 257 - - - - -	210
<i>Dick v. Badert</i> (1883), 10 Q. B. D. 387; 48 L. T. 391; 47 J. P. 422; 5 Asp. M. C. 49 - - - - -	200, 258
<i>District of Columbia v. Dempsey</i> (1899), 27 Wash. L. R. 87; 13 App. D. C. 533 - - - - -	241
<i>Dobbs v. Grand Junction Waterworks Co.</i> (1883), 9 A. C. 49; 53 L. J. Q. B. 50; 49 L. T. 541; 32 W. R. 432; 48 J. P. 5 - - -	182

	PAGE
<i>Docherty v. Glasgow Tramway and Omnibus Co., Ltd.</i> (1894), 32 S. L. R. 353 - - - - -	247, 378
<i>Doe v. Bridges</i> (1831), 1 B. & Ad. 847 - - - - -	258
<i>Doe d. Edney v. Benham</i> (1845), 7 Q. B. 976; 14 L. J. Q. B. 342; 9 Jur. 662 - - - - -	93
<i>Doe d. Myatt v. St. Helen's and Runcorn Gap Railway Co.</i> (1841), 2 Q. B. 364; 11 L. J. Q. B. 6; 1 G. & D. 663; 2 Rail. Cas. 756; 6 Jur. 641 - - - - -	179
<i>Doughty v. Firbank</i> (1883), 10 Q. B. D. 358; 52 L. J. Q. B. 480; 48 L. T. 530; 48 J. P. 55 - - - - -	253
<i>Downing v. Birmingham and Midland Trams</i> (1888), 5 T. L. R. 40 - - - - -	247, 354
<i>Doyle v. Dublin Southern District Tramway Co.</i> (1897), 31 Ir. L. T. Newspaper, 120 - - - - -	250
<i>Drew v. New River Co.</i> (1834), 6 C. & P. 754 - - - - -	228
<i>Dublin, Rathmines and Rathcoole Railway Co., In re</i> (1878), 1 L. R. I. 98 - - - - -	301
<i>Dublin United Tramways Co., Ltd. v. Fitzgerald</i> , (1903) A. C. 99; 72 L. J. P. C. 52; 87 L. T. 532; 51 W. R. 321; 67 J. P. 229; 1 L. G. R. 386; 19 T. L. R. 78; 37 Ir. L. T. R. 3 - 144, 145, 235	
<i>Dudley and Kingswinford Tramways Co., In re</i> (1893), W. N. 162; 63 L. J. Ch. 108 - - - - -	117, 118, 299
<i>Dudley and Stourbridge Steam Tramways Co., Ltd. v. Wheeler</i> (1882), "Times" Newspaper, September 21 - - - - -	118
<i>Dundee and Arbroath Joint Line Committee v. Assessor of Arbroath</i> (1883), 11 R. 396; 21 S. L. R. 540 - - - - -	522
<i>Dungey v. London Corporation</i> (1869), 38 L. J. C. P. 298; 20 L. T. 921; 17 W. R. 1106 - - - - -	111
<i>Durham and Sunderland Railway Co. v. Walker</i> (1842), 2 Q. B. 940; 11 L. J. Ex. 440; 2 G. & D. 326; 3 Rail. Cas. 36 - - - - -	113
<i>Dwyer v. Buffalo General Electric Co.</i> , 46 N. Y. S. 874; 20 App. Div. 124 - - - - -	240
<i>Dyer v. Munday</i> , (1895) 1 Q. B. 742; 64 L. J. Q. B. 448; 14 R. 306; 72 L. T. 448; 43 W. R. 440; 59 J. P. 276; 11 T. L. R. 282 - 242	
<i>Dyson v. London and North Western Railway Co.</i> (1881), 7 Q. B. D. 32; 50 L. J. M. C. 78; 44 L. T. 609; 29 W. R. 565; 45 J. P. 650 214	
<i>Eastern Counties Railway Co. v. Broom</i> (1851), 6 Ex. 314; 20 L. J. Ex. 196; 6 Rail. Cas. 743; 15 Jur. 297 - - - - -	219
<i>Eastern and South African Telegraph Co., Ltd. v. Cape Town Tramways Companies, Ltd.</i> , (1902) A. C. 381; 71 L. J. P. C. 122; 86 L. T. 457; 50 W. R. 657; 18 T. L. R. 523 - - - - -	234, 237
<i>Eastern Union Railway Co. v. Hart</i> (1852), 8 Ex. 116; 22 L. J. Ex. 20; 17 Jur. 89 - - - - -	179
<i>East Fremantle Corporation v. Annois</i> , (1902) A. C. 213; 71 L. J. P. C. 39; 85 L. T. 732; 18 T. L. R. 199 - - - - -	225
<i>East Indian Railway Co. v. Kalidas Mukerjee</i> , (1901) A. C. 396; 70 L. J. P. C. 63; 84 L. T. 210; 17 T. L. R. 284 - - - - -	222
<i>East London Waterworks Co. v. St. Matthew, Bethnal Green</i> (1886), 17 Q. B. D. 475; 55 L. J. Q. B. 571; 54 L. T. 919; 35 W. R. 37; 50 J. P. 820; 2 T. L. R. 880 - - - - -	142
<i>Economy Light and Power Co. v. Stephen</i> (1900), 87 Ill. App. 220 - 240	
<i>Eddy v. Ottawa City Passenger Railway Co.</i> (1871), 31 Upp. Can. Q. B. 569 - - - - -	134

	PAGE
Edgware Highway Board <i>v.</i> Harrow District Gas Co. (1874), L. R. 10 Q. B. 92; 44 L. J. Q. B. 1; 31 L. T. 402; 23 W. R. 90 - - - - -	137
Edinburgh and District Tramways Co., Ltd. <i>v.</i> Mooney (1901), 4 F. 390; 39 S. L. R. 260; 9 S. L. T. 307; (1903), W. N. 161 - 255, 256	
Edinburgh Northern Tramways Co. <i>v.</i> Mann, (1896) 23 R. 1056; 33 S. L. R. 752; 4 S. L. T. 144 - - - - -	131
Edinburgh, Perth and Dundee Railway Co. <i>v.</i> Arthur (1854), 17 D. 252; 27 Jur. 99 - - - - -	522
Edinburgh Street Tramways Co. <i>v.</i> Black (1873), L. R. 2 H. L. Sc. 336; 11 M. 418; 11 M. (H. L.) 57; Paterson, 2068; 10 S. L. R. 654 - - - - -	105, 111, 127
Edinburgh Street Tramways Co. <i>v.</i> Lord Provost and Magistrates of Edinburgh, (1894) A. C. 456; 6 R. 317; 63 L. J. Q. B. 769; 71 L. T. 301; 10 T. L. R. 625; 21 R. 488; 21 R. (H. L.) 78; 31 S. L. R. 953 - - - - -	4, 164, 179, 181, 191, 192
Edinburgh Street Tramways Co. <i>v.</i> Torbain (1877), 3 A. C. 58; 37 L. T. 288; 4 R. (H. L.) 87; 14 S. L. R. 729 - - - - -	194
Edinburgh Water Co. <i>v.</i> Hay (1854), 1 Macq. 682; 17 D. (H. L.) 1; Paterson, 304; 26 Jur. 246 - - - - -	52
Edney, Doe d. <i>v.</i> Benham (1845), 7 Q. B. 976; 14 L. J. Q. B. 342; 9 Jur. 662 - - - - -	93
Edwards <i>v.</i> Birmingham Central Tramway Co. (1892), "Times" Newspaper, Nov. 9 - - - - -	248
Edwards <i>v.</i> Midland Railway Co. (1880), 6 Q. B. D. 287; 50 L. J. Q. B. 281; 43 L. T. 694; 29 W. R. 609; 45 J. P. 374 - - - - -	215
Egginton <i>v.</i> Pearl (1875), 33 L. T. 428; 49 J. P. 56 - - - - -	194, 201
Eickhof <i>v.</i> Chicago North Shore Street Railway Co., 77 Ill. App. 196 - 241	
Electric Telegraph Co. <i>v.</i> Salford Overseers (1855), 11 Ex. 181; 24 L. J. M. C. 146; 1 Jur. (N. S.) 733; 3 W. R. 518 - - - - -	56
Electric Telegraph of Ireland, In re (1856), 22 Beav. 471; 22 L. J. Ch. 614 - - - - -	174
Elkins <i>v.</i> North Metropolitan Tramways Co. (1889), 24 L. J. News- paper, 649 - - - - -	133
Elliott <i>v.</i> South Devon Railway Co. (1848), 2 Ex. 725; 17 L. J. Ex. 262; 5 Rail. Cas. 500 - - - - -	102
Ellis <i>v.</i> Sheffield Gas Consumers' Co. (1853), 2 E. & B. 767; 23 L. J. Q. B. 42; 2 C. L. R. 249; 18 Jur. 146; 2 W. R. 19 - - - - -	232
Elmhirst <i>v.</i> Spencer (1849), 2 Mac. & G. 45 - - - - -	137
Elwood <i>v.</i> Bullock (1844), 6 Q. B. 383; 13 L. J. Q. B. 330; 8 Jur. 1044 - - - - -	207
Emma Silver Mining Co. <i>v.</i> Grant (1879), 11 Ch. D. 918; 40 L. T. 804 - - - - -	130
Empress Engineering Co., In re (1880), 16 Ch. D. 125; 43 L. T. 742; 29 W. R. 342 - - - - -	128
Ennis <i>v.</i> Gray (1895), 87 Hun. 355; 34 N. Y. S. 379 - - - - -	241
Ennis and West Clare Railway Co., In re (1879), 3 L. R. I. 187 - 173	
Erlanger <i>v.</i> New Sombbrero Phosphate Co. (1878), 3 A. C. 1218; 48 L. J. Ch. 73; 39 L. T. 269; 26 W. R. 65 - - - - -	130
Evans <i>v.</i> South London Tramways Co. (1894), 10 T. L. R. 312 - - 251	
Exmouth Docks Co., In re (1873), L. R. 17 Eq. 181; 43 L. J. Ch. 110 - - - - -	174

	PAGE
<i>Farrant v. Barnes</i> (1862), 11 C. B. (N. S.) 553; 31 L. J. C. P. 137; 8 Jur. (N. S.) 868 - - - - -	222
<i>Faversham, Company or Fraternity of Free Fishermen of, In re</i> (1887), 36 Ch. D. 329; 57 L. J. Ch. 187; 57 L. T. 577; 3 T. L. R. 797 - - - - -	174
<i>Fenwick v. East London Railway Co.</i> (1875), L. R. 20 Eq. 544; 44 L. J. Ch. 602; 23 W. R. 901 - - - - -	151, 152
<i>Ferrar v. Commissioners of Sewers for London</i> (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102; 21 L. T. 295; 17 W. R. 709 - - - - -	111
<i>Fielding (Fielden) v. Morley Corporation</i> (1899), 1 Ch. 1; 67 L. J. Ch. 611; 79 L. T. 231; 47 W. R. 295; 16 T. L. R. 219 - - - - -	245
<i>Finchley Electric Light Co. v. Finchley Urban District Council,</i> (1903) 1 Ch. 437; 72 L. J. Ch. 297; 88 L. T. 215; 51 W. R. 375; 67 J. P. 97; 1 L. G. R. 244; 19 T. L. R. 238 - - - - -	229
<i>Fletcher v. London United Tramways, Ltd.,</i> (1902) 2 K. B. 269; 71 L. J. K. B. 653; 86 L. T. 700; 50 W. R. 597; 66 J. P. 596; 18 T. L. R. 639 - - - - -	255, 309
<i>Fletcher v. Rylands</i> (1868), L. R. 1 Ex. 265; L. R. 3 H. L. 330; 35 L. J. Ex. 154; 37 L. J. Ex. 161; 19 L. T. 220; 12 Jur. (N. S.) 603; 14 W. R. 799 - - - - -	236, 237, 238, 239
<i>Florence Land and Public Works Co., In re</i> (1878), 10 Ch. D. 530; 48 L. J. Ch. 137; 39 L. T. 589; 27 W. R. 236 - - - - -	179
<i>Flower v. London, Brighton & South Coast Railway Co.</i> (1865), 2 Dr. & S. 330; 34 L. J. Ch. 540; 6 N. R. 200; 11 Jur. (N. S.) 406; 12 L. T. 10; 13 W. R. 518 - - - - -	227
<i>Fortescue v. Lostwithiel & Fowey Railway Co.,</i> (1894) 3 Ch. 621; 64 L. J. Ch. 37; 8 R. 664; 71 L. T. 423; 43 W. R. 138 - - - - -	260
<i>Foster v. Moore</i> (1879), 4 L. R. 1 670 - - - - -	200, 204
<i>Foster v. New Trinidad Lake Asphalt Co., Ltd.,</i> (1901) 1 Ch. 208; 70 L. J. Ch. 123; 49 W. R. 119; 8 Manson, 47; 17 T. L. R. 89 - - - - -	188
<i>Francis v. Cockrell</i> (1870), L. R. 5 Q. B. 184, 501; 39 L. J. Q. B. 113, 291; 10 B. & S. 850; 23 L. T. 466; 18 W. R. 1205 - - - - -	235
<i>Fraser v. Edinburgh Street Tramways Co.</i> (1882), 10 R. 264; 20 S. L. R. 192 - - - - -	249
<i>Free Fishermen of Faversham, Company or Fraternity of, In re</i> (1887), 36 Ch. D. 329; 57 L. J. Ch. 187; 57 L. T. 577; 3 T. L. R. 797 - - - - -	174
<i>Freel v. Bury</i> (1900), "Times" Newspaper, July 21; (1901) Jan. 26 250, 377	
<i>Freeman v. Brooklyn Heights Railroad Co.</i> (1900), 66 N. Y. S. 1052; 54 App. Div. 596 - - - - -	241
<i>Friend v. London, Chatham & Dover Railway Co.</i> (1877), 2 Ex. D. 437; 46 L. J. Ex. 696; 36 L. T. 729; 25 W. R. 735 - - - - -	251
<i>Furlong v. South London Tramways Co.</i> (1884), C. & E. 316; 48 J. P. 329 - - - - -	217, 218, 246
<i>Furniss v. Midland Railway Co.</i> (1868), L. R. 6 Eq. 473 - - - - -	113
<i>Galloway v. London Corporation</i> (1866), L. R. 1 H. L. 34; 35 L. J. Ch. 477; 12 Jur. (N. S.) 747; 14 L. T. 865 - - - - -	227
<i>Gardner v. London, Chatham & Dover Rail. Co.</i> (1867), L. R. 2 Ch. 201; 36 L. J. Ch. 323; 15 L. T. 552; 15 W. R. 324 - - - - -	175, 178, 192
<i>Garton v. Bristol & Exeter Rail. Co.</i> (1860), 4 H. & N. 33, 831; 8 H. L. C. (11 E. R.) 477; 28 L. J. Ex. 169; 30 L. J. Q. B. 273; 30 L. J. Ex. 241 - - - - -	181

	PAGE
Gas Light and Coke Co. <i>v.</i> South Metropolitan Gas Co. (1889), 62 L. J. Ch. 123; 62 L. T. 126; 54 J. P. 373; 5 T. L. R. 731 - - - - -	457
Gas Light and Coke Co. <i>v.</i> Vestry of St. Mary Abbott's, Kensington (1885), 15 Q. B. D. 1; 54 L. J. Q. B. 414; 53 L. T. 457; 33 W. R. 892; 49 J. P. 469; 1 T. L. R. 452 - - -	226
Gavin <i>v.</i> Hoylake Rail. Co. (1865), L. R. 1 Ex. 9; 35 L. J. Ex. 52 -	130
Geddis <i>v.</i> Proprietors of Bann Reservoir (1878), 3 A. C. 430; 2 L. R. I. 118 - - - - -	224, 225
Geeves <i>v.</i> London General Omnibus Co., Ltd. (1901), 17 T. L. R. 249 - - - - -	249
Gentel <i>v.</i> Rapps, (1902) 1 K. B. 160; 71 L. J. K. B. 105; 85 L. T. 683; 50 W. R. 216; 66 J. P. 117; 20 Cox, C. C. 104; 18 T. L. R. 72 - - - - -	201, 377
Glasgow Corporation <i>v.</i> Glasgow Tramway and Omnibus Co., Ltd., (1898) A. C. 631; 14 T. L. R. 516; 24 R. 628; 25 R. (H. L.) 77; 33 S. L. R. 736 - - - - -	119
Glass <i>v.</i> Linton (1882), 5 Coup. Just. Ca. 160 - - - - -	260
Gluckstein <i>v.</i> Barnes, (1900) A. C. 240; 69 L. J. Ch. 385; 82 L. T. 393; 7 Manson, 321; 16 T. L. R. 321 - - - - -	130
Goff <i>v.</i> Great Northern Rail. Co. (1861), 3 E. & E. 672; 30 L. J. Q. B. 148; 7 Jur. (N. S.) 286; 3 L. T. 850 - - - - -	216
Goldberg <i>v.</i> Liverpool Corporation (1900), 82 L. T. 362; 16 T. L. R. 320 - - - - -	94, 228
Goldsmid <i>v.</i> Tunbridge Wells Improvement Commissioners (1866), L. R. 1 Ch. 349; 35 L. J. Ch. 382; 12 Jur. (N. S.) 308; 14 L. T. 154; 14 W. R. 562 - - - - -	137
Goodson <i>v.</i> Sunbury Gas Consumers' Co. (1896), 75 L. T. 251; 60 J. P. 585 - - - - -	231
Goodtitle d. Chester <i>v.</i> Alker (1757), 1 Burr. 133; 1 Ld. Ken. 427 -	261
Gorman <i>v.</i> Waterford and Limerick Railway Co., (1900) 2 I. R. 341; 34 Ir. L. T. R. 51 - - - - -	88
Gorris <i>v.</i> Scott (1874), L. R. 9 Ex. 125; 43 L. J. Ex. 92; 30 L. T. 431; 22 W. R. 575 - - - - -	210
Gracey <i>v.</i> Belfast Tramway Co., (1901) 2 I. R. 322; 34 Ir. L. T. R. 73 -	246
Gray <i>v.</i> Pullen (1864), 5 B. & S. 970; 34 L. J. Q. B. 265; 11 L. T. 569; 13 W. R. 257 - - - - -	230, 231
Great Eastern Railway Co. <i>v.</i> Hackney Board of Works (1883), 8 A. C. 687; 52 L. J. M. C. 105; 49 L. T. 509; 31 W. R. 769 - - -	104
Great Eastern Railway Co. <i>v.</i> Haughley Overseers (1866), L. R. 1 Q. B. 666; 35 L. J. M. C. 229; 12 Jur. (N. S.) 596; 14 L. T. 548; 14 W. R. 779 - - - - -	67, 78
Great Northern Railway Co. <i>v.</i> Eastern Counties Rail. Co. (1851), 9 Hare, 306; 21 L. J. Ch. 837; 7 Rail. Cas. 643 - - -	192
Great Northern Railway Co. <i>v.</i> South Yorkshire Railway Co. (1854), 9 Ex. 642; 23 L. J. Ex. 186 - - - - -	193
Great Northern Railway Co. <i>v.</i> Winder, (1892) 2 Q. B. 595; 61 L. J. Q. B. 608; 67 L. T. 422; 56 J. P. 775; 8 T. L. R. 564 - - -	204
Great Northern Steamship Fishing Co. <i>v.</i> Edgehill (1883), 11 Q. B. D. 225 - - - - -	210
Great Western Rail. Co. <i>v.</i> Badgworth Overseers (1867), L. R. 2 Q. B. 251; 36 L. J. M. C. 33; 15 W. R. 579 - - - - -	65
Great Western Railway Co. <i>v.</i> Melksham Union (1870), 34 J. P. 692 - - - - -	57, 58

	PAGE
Great Western Railway Co. <i>v.</i> Swindon and Cheltenham Railway Co. (1884), 22 Ch. D. 677; 9 A. C. 787; 52 L. J. Ch. 306; 53 L. J. Ch. 1075; 51 L. T. 798; 32 W. R. 957; 48 J. P. 821 - - - - -	113, 114
Great Western Railway Co. <i>v.</i> Talbot, (1902) 2 Ch. 759; 71 L. J. Ch. 835; 87 L. T. 405; 18 T. L. R. 775 - - - - -	113
Green <i>v.</i> London General Omnibus Co. (1859), 7 C. B. (N. S.) 290; 29 L. J. C. P. 13; 6 Jur. (N. S.) 228; 1 L. T. 95; 8 W. R. 88 - - - - -	215, 244
Gregson <i>v.</i> Potter (1879), 5 Ex. D. 142; 48 L. J. M. C. 86; 27 W. R. 840 - - - - -	194
Greig <i>v.</i> Aberdeen District Tramways Co. (1890), 17 R. 808 - - - - -	248, 378
Griffin <i>v.</i> United Electric Light Co. (1896), 164 Mass. 492; 49 Am. St. R. 477 - - - - -	241
Griffiths <i>v.</i> Earl of Dudley (1882), 9 Q. B. D. 357; 51 L. J. Q. B. 543; 47 L. T. 10; 30 W. R. 797; 46 J. P. 711 - - - - -	252
Grinted <i>v.</i> Toronto Railway Co. (1894), 24 Ont. R. 683 - - - - -	252
Grote <i>v.</i> Chester and Holyhead Railway Co. (1848), 2 Ex. 251; 5 Rail. Cas. 649 - - - - -	235
Groves <i>v.</i> Lord Wimborne, (1898) 2 Q. B. 402; 67 L. J. Q. B. 862; 79 L. T. 284; 47 W. R. 87; 14 T. L. R. 493 - - - - -	210
Halifax Electric Tramway Co. <i>v.</i> Inglis (1900), 30 Can. S. C. R. 256 - - - - -	250
Halifax Street Railway Co. <i>v.</i> Pryce (1893), 22 Can. S. C. R. 258 - - - - -	134
Hall <i>v.</i> Linton (1879), 7 R. (J. C.) 2; 4 Coup. Just. Ca. 282; 17 S. L. R. 37 - - - - -	211, 258, 264
Hall <i>v.</i> Nixon (1875), L. R. 10 Q. B. 152; 44 L. J. M. C. 51; 32 L. T. 87; 23 W. R. 612 - - - - -	200, 204
Hall <i>v.</i> South London Tramways Co. (1896), 12 T. L. R. 611 - - - - -	248, 249
Hamlyn <i>v.</i> John Houston & Co., (1903) 1 K. B. 81; 72 L. J. K. B. 72; 87 L. T. 500; 51 W. R. 99; 19 T. L. R. 66 - - - - -	246
Hammersmith and City Railway Co. <i>v.</i> Brand (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; 21 L. T. 238; 18 W. R. 12 - - - - -	233
Hanks <i>v.</i> Bridgman, (1896) 1 Q. B. 253; 65 L. J. M. C. 41; 74 L. T. 26; 44 W. R. 285; 18 Cox, C. C. 224; 60 J. P. 312; 12 T. L. R. 193 - - - - -	201, 213
Hanson <i>v.</i> Waller, (1901) 1 K. B. 390; 70 L. J. K. B. 231; 84 L. T. 91; 49 W. R. 445; 17 T. L. R. 162 - - - - -	217
Hardaker <i>v.</i> Idle District Council, (1896) 1 Q. B. 335; 65 L. J. Q. B. 363; 74 L. T. 69; 44 W. R. 323; 60 J. P. 196; 12 T. L. R. 207 - - - - -	230
Harrison <i>v.</i> Southwark and Vauxhall Water Co., (1891) 2 Ch. 409; 60 L. J. Ch. 630; 64 L. T. 864 - - - - -	225, 226, 227
Harrop <i>v.</i> Ossett Corporation, (1898) 1 Ch. 525; 67 L. J. Ch. 347; 78 L. T. 387; 46 W. R. 391; 62 J. P. 297; 14 T. L. R. 308 - - - - -	245
Hart <i>v.</i> Eastern Union Railway Co. (1852), 8 Ex. 116; 22 L. J. Ex. 20; 17 Jur. 89 - - - - -	179
Harter <i>v.</i> Salford Overseers (1865), 6 B. & S. 591; 34 L. J. M. C. 206; 11 Jur. (N. S.) 1036; 13 W. R. 861 - - - - -	61
Hartley <i>v.</i> Wilkinson (1885), 49 J. P. 726 - - - - -	161, 354
Harvey <i>v.</i> Truro Rural District Council (1903), W. N. 126; 72 L. J. Ch. 705; 19 T. L. R. 576 - - - - -	482
Haston <i>v.</i> Edinburgh Street Tramways Co., Ltd. (1887), 14 R. 621; 24 S. L. R. 435 - - - - -	181, 254
Hawkins <i>v.</i> Robinson (1873), 37 J. P. 662 - - - - -	137

	PAGE
Hawley <i>v.</i> Steele (1877), 6 Ch. D. 521; 46 L. J. Ch. 782; 37 L. T. 625	- 226
Heap <i>v.</i> Day (1887), 34 W. R. 627; 51 J. P. 213; 2 T. L. R. 687	- 201, 213
Hearne <i>v.</i> Garton (1859), 2 E. & E. 66; 28 L. J. M. C. 16; 5 Jur. (N. S.) 648; 7 W. R. 566	- 220, 221
Heaven <i>v.</i> Pender (1883), 11 Q. B. D. 503; 52 L. J. Q. B. 702; 49 L. T. 357; 47 J. P. 709	- 232
Hector <i>v.</i> Boston Electric Light Co. (1899), 174 Mass. 212	- 241
Hereford and South Wales Waggon and Engineering Co., In re (1876), 2 Ch. D. 621; 45 L. J. Ch. 461; 35 L. T. 40; 24 W. R. 953	- 129
Herron <i>v.</i> Rathmines and Rathgar Improvement Commissioners, (1892) A. C. 498; 67 L. T. 658; 29 L. R. I. 218	- 126, 127
Hickman <i>v.</i> Birch (1889), 24 Q. B. D. 172; 59 L. J. M. C. 22; 62 L. T. 113; 54 J. P. 406; 6 T. L. R. 104	- 221
Higgins <i>v.</i> Harding (1872), L. R. 8 Q. B. 7; 42 L. J. M. C. 31; 27 L. T. 483; 21 W. R. 191	- 104
Hitchins <i>v.</i> Kilkenny, &c. Railway Co. (1850), 9 C. B. 536	- 129
Hobbs <i>v.</i> London and South Western Railway Co. (1875), L. R. 10 Q. B. 111; 44 L. J. Q. B. 49; 32 L. T. 352; 23 W. R. 520	- 253
Hole <i>v.</i> Sittingbourne and Sheerness Railway Co. (1861), 6 H. & N. 488; 30 L. J. Ex. 81; 3 L. T. 750; 9 W. R. 274	- 230
Holliday <i>v.</i> National Telephone Co., (1899) 2 Q. B. 392; 68 L. J. Q. B. 1016; 81 L. T. 252; 47 W. R. 658; 15 T. L. R. 483	- 230
Holmes <i>v.</i> City of Birmingham Tramway Co. (1902), 113 L. T. Newspaper, 197	- 255
Holywell Union <i>v.</i> Halkyn District Mines Drainage Co., (1895) A. C. 117; 11 L. R. 98; 64 L. J. M. C. 113; 71 L. T. 818; 59 J. P. 566; 11 T. L. R. 132	- 52
Hope <i>v.</i> Croydon and Norwood Tramways Co. (1887), 34 Ch. D. 730; 56 L. J. Ch. 760; 56 L. T. 822; 35 W. R. 594	- 175
Hornsey Urban District Council <i>v.</i> Hennell, (1902) 2 K. B. 73; 71 L. J. K. B. 479; 86 L. T. 423; 50 W. R. 521; 66 J. P. 613; 18 T. L. R. 512	- 509
Horwitz, In re (1901), 26 Vict. L. R. 500	- 51
Howard <i>v.</i> Patent Ivory Manufacturing Co. (1888), 38 Ch. D. 156; 57 L. J. Ch. 878; 58 L. T. 395; 36 W. R. 801	- 128
Howells <i>v.</i> Wynne (1863), 15 C. B. (N. S.) 3; 32 L. J. M. C. 241; 9 Jur. (N. S.) 1041	- 243
Howitt <i>v.</i> Nottingham and District Tramways Co., Ltd. (1883), 12 Q. B. D. 16; 53 L. J. Q. B. 21; 50 L. T. 99; 32 W. R. 248	- 143, 146, 231
Howland <i>v.</i> Dover Harbour Board (1898), 14 T. L. R. 355	- 232
Hoyle and Jackson <i>v.</i> Oldham Union, (1894) 2 Q. B. 372; 9 R. 287; 63 L. J. M. C. 178; 70 L. T. 741; 58 J. P. 669; 10 T. L. R. 315	- 61
Hudson River Telephone Co. <i>v.</i> Watervliet Turnpike and Railroad Co. (1892), 121 N. Y. 397; 135 N. Y. 393	- 239
Huffam <i>v.</i> North Staffordshire Railway Co., (1894) 2 Q. B. 821; 63 L. J. M. C. 225; 10 R. 507; 71 L. T. 517; 43 W. R. 28; 18 Cox, C. C. 41; 59 J. P. 23; 10 T. L. R. 653	- 214
Hughes <i>v.</i> Leeds Corporation (1902), "Times" Newspaper, Aug. 4	- 250
Hughes <i>v.</i> Percival (1883), 8 A. C. 443; 52 L. J. Q. B. 719; 49 L. T. 189; 31 W. R. 725; 47 J. P. 772	- 232
Hull, Barnsley and West Riding Junction Railway, In re (1893), W. N. 83	- 300, 301, 302

	PAGE
Hunt <i>v.</i> Great Northern Railway Co., (1891) 1 Q. B. 601; 60 L. J. Q. B. 216; 64 L. T. 418; 55 J. P. 470; 7 T. L. R. 493	- - 254
Hunt <i>v.</i> London Tramways Co., Ltd. (1877), 12 L. J. Newspaper, 386	- - - 162
Hutchings <i>v.</i> Smith (1877), 12 L. J. Newspaper, 386	- - - 162
Huzzey <i>v.</i> Field (1835), 2 C. M. & R. 432; 3 Tyr. 371; 4 L. J. Ex. 239	- - - 242
Hyams <i>v.</i> Webster (1868), L. R. 4 Q. B. 138; 38 L. J. Q. B. 21; 17 W. R. 232	- - - 231
Hyde Corporation <i>v.</i> Oldham, Ashton and Hyde Electric Tramways, Ltd. (1900), 64 J. P. 596; 16 T. L. R. 492	- - 93, 136, 146
Ilford Gas Co. and Ilford Urban District Council, <i>In re</i> (1903), 88 L. T. 236; 67 J. P. 239; 1 L. G. R. 213	- - - 152
Illingsworth <i>v.</i> Boston Electric Light Co. (1894), 161 Mass. 583	- 241
Imperial Gas Light and Coke Co. <i>v.</i> West London Junction Gas Co. (1868), W. N. 1; 58 L. T. 900, n.	- - - 457
Institute of Patent Agents <i>v.</i> Lockwood, (1894) A. C. 347; 63 L. J. P. C. 74; 6 R. 219; 71 L. T. 205; 10 T. L. R. 527; 21 R. (H. L.) 61; 31 S. L. R. 942	- - - 268
Isle of Wight Ferry Co., <i>In re</i> (1865), 2 H. & M. 597; 34 L. J. Ch. 194; 11 Jur. (N. S.) 279; 12 L. T. 263	- - - 174
Islington Corporation <i>v.</i> London School Board, (1902) 2 K. B. 701; 71 L. J. K. B. 852; (1903) 2 K. B. 354; 72 L. J. K. B. 677; 19 T. L. R. 589 (C. A.)	- - - 76
Jardine <i>v.</i> Stonefield Laundry Co. (1887), 14 R. 839; 24 S. L. R. 599	- - - 263
Jenkinson <i>v.</i> Rossendale Valley Trams Co., Ltd. (1890), "Times" Newspaper, Feb. 13, Apr. 24	- - - 248
Jennings <i>v.</i> Great Northern Railway Co. (1865), L. R. 1 Q. B. 7; 35 L. J. Q. B. 15; 12 Jur. (N. S.) 331; 13 L. T. 231; 14 W. R. 28	- - - 200
Jeremiah Ambler & Sons, Ltd. <i>v.</i> Bradford Corporation, (1902) 2 Ch. 585; 71 L. J. Ch. 744; 87 L. T. 217; 66 J. P. 708; 18 T. L. R. 758	- - - 245
Jolly <i>v.</i> North Staffordshire Tramway Co. (1887), "Times" Newspaper, July 27	- - - 247
Joel <i>v.</i> Morison (1834), 6 C. & P. 501	- - - 242
Jones <i>v.</i> Boyce (1816), 1 Stark. N. P. 493	- - - 243
Jones <i>v.</i> Duck (1900), "Times" Newspaper, Mar. 16	- - - 217
Jordeson <i>v.</i> Sutton, Southcoates and Drypool Gas Co., (1899) 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815; 63 J. P. 692; 15 T. L. R. 374	- 226
Kaye <i>v.</i> Croydon Tramways Co., (1898) 1 Ch. 358; 67 L. J. Ch. 222; 78 L. T. 237; 46 W. R. 405; 14 T. L. R. 244	- - - 192
Keator <i>v.</i> Seranton Traction Co. (1899), 191 Pa. 102	- - - 241
Kelner <i>v.</i> Baxter (1866), L. R. 2 C. P. 174; 36 L. J. C. P. 94; 12 Jur. (N. S.) 1016; 15 L. T. 313; 15 W. R. 278	- - 127, 128
Kemp <i>v.</i> South Eastern Railway Co. (1872), L. R. 7 Ch. 364; 41 L. J. Ch. 404; 26 L. T. 110; 20 W. R. 306	- - - 227

	PAGE
Kent Tramways Co., In re (1879), 12 Ch. D. 312; 40 L. T. 393	- 129
Kingston (City of) v. Kingston, Portsmouth & Cataraqui Electric Railway Co. (1897), 28 Ont. R. 399	- - - 260
Knight v. North Metropolitan Tramways Co. (1898), 78 L. T. 227; 42 Sol. J. 345; 14 T. L. R. 286	- - - 218, 219, 246
Krauth v. City of Birmingham Tramways Co. (1902), "Times" Newspaper, Aug. 4	- - - 250
Kruse v. Johnson, (1898) 2 Q. B. 91; 67 L. J. Ch. 782; 78 L. T. 647; 46 W. R. 630; 62 J. P. 469; 14 T. L. R. 416	- - - 198
Lady Forrest (Murchison) Gold Mine, Ltd., In re, (1901) 1 Ch. 582; 70 L. J. Ch. 275; 84 L. T. 559; 8 Manson, 438; 17 T. L. R. 198	- 130, 131
Ladywell Mining Co. v. Brookes (1887), 35 Ch. D. 400; 56 L. J. Ch. 684; 56 L. T. 677; 35 W. R. 785; 3 T. L. R. 546	- - - 130
Lagunas Nitrate Co. v. Lagunas Syndicate, (1899) 2 Ch. 392; 68 L. J. Ch. 699; 81 L. T. 334; 48 W. R. 74; 15 T. L. R. 436	- - 130
Laird v. Clyde Navigation Trustees (1879), 6 R. 756; 16 S. L. R. 401	194
Lancashire Brick and Terra Cotta Co., Ltd. v. Lancashire and Yorkshire Railway Co., (1902) 1 K. B. 651; 71 L. J. K. B. 431; 86 L. T. 176; 11 R. & C. T. C. 138; 18 T. L. R. 330	- - - 120
Lancashire and Cheshire Telephone Exchange Co. v. Manchester Overseers (1884), 14 Q. B. D. 267; 54 L. J. M. C. 63; 52 L. T. 793; 33 W. R. 203; 49 J. P. 724; 1 T. L. R. 111	- - - 57
Larson v. Central Railroad Co., 56 Ill. App. 263	- - - 240
Lea v. Facey (1886), 19 Q. B. D. 352; 56 L. J. Q. B. 536; 58 L. T. 32; 35 W. R. 721; 51 J. P. 756	- - - 205
Leeds, Bradford and Halifax Railway Co. v. Armley Overseers (1861), 25 J. P. 711	- - - 53
Leek Improvement Commissioners v. Staffordshire JJ. (1888), 20 Q. B. D. 794; 57 L. J. M. C. 102; 36 W. R. 654; 52 J. P. 403; 4 T. L. R. 526	- - - 144
Leith Magistrates v. Gibb (1882), 9 R. 627; 19 S. L. R. 399	- - 104
Lemaitre v. Davis (1881), 19 Ch. D. 281; 51 L. J. Ch. 173; 46 L. T. 407; 30 W. R. 360	- - - 232
Lewis v. Read (1845), 13 M. & W. 834; 14 L. J. Ex. 295	- - 244
Lichfield Corporation v. Simpson (1845), 8 Q. B. 65; 15 L. J. Q. B. 78	210
Lightbound v. Higher Bebington Local Board (1885), 16 Q. B. D. 577; 55 L. J. M. C. 94; 53 L. T. 812; 34 W. R. 219; 50 J. P. 500	- 104
Lill v. London General Omnibus Co. (1899), "Times" Newspaper, Jan. 26, 31; Ap. 13	- - - 249
Limpus v. London General Omnibus Co. (1862), 1 H. & C. 526; 32 L. J. Ex. 34; 9 Jur. (N. S.) 333; 7 L. T. 641; 11 W. R. 149	- 246
Lindsey (Earl of) v. Great Northern Railway Co. (1853), 10 Hare, 664; 22 L. J. Ch. 995; 17 Jur. 552; 1 W. R. 527	- - - 128
Liverpool Corporation v. Chorley Waterworks Co. (1852), 2 De G. M. & G. 852	- - - 127
Liverpool Corporation v. Llanfyllin Union, (1899) 2 Q. B. 14; 68 L. J. Q. B. 762; 80 L. T. 667; 63 J. P. 452; 15 T. L. R. 349	- - 63
Liverpool Tramways Co. v. Toxteth Local Board (1876), W. N. 145; "Times" Newspaper, Apr. 13	- - - 172
Liverpool Tramways Co. v. Liverpool Omnibus Co. (1870), W. N. 126	162
London and Blackwall Railway Co. v. Limehouse Board of Works (1856), 3 K. & J. 123; 26 L. J. Ch. 164; 5 W. R. 64	- - 138

	PAGE
London and Brighton Railway Co. <i>v.</i> Watson (1879), 3 C. P. D. 429; 4 C. P. D. 118; 47 L. J. C. P. 634; 48 L. J. C. P. 316; 40 L. T. 183; 27 W. R. 614 - - - - -	203, 214, 258
London, Brighton and South Coast Railway Co. <i>v.</i> London and South Western Railway Co. (1859), 4 De G. & J. 362; 28 L. J. Ch. 521; 5 Jur. (N. S.) 801; 7 W. R. 591 - - - - -	192
London, Brighton and South Coast Railway Co. <i>v.</i> Truman (1885), 11 A. C. 45; 55 L. J. Ch. 354; 54 L. T. 250; 34 W. R. 637; 50 J. P. 388; 1 T. L. R. 287 - - - - -	226, 232, 233
London, Chatham and Dover Railway Arrangement Act, <i>In re</i> (1869), L. R. 5 Ch. 671; 20 L. T. 718; 17 W. R. 946 - - - - -	127
London County Council <i>v.</i> Erith Overseers, (1893) A. C. 562; 6 R. 22; 63 L. J. M. C. 9; 69 L. T. 725; 42 W. R. 330; 57 J. P. 821; 10 T. L. R. 1 - - - - -	54, 55, 60
London County Council and London Street Tramways Co., <i>In re</i> (in H. L., London Street Tramways Co. <i>v.</i> London County Council, <i>q.v.</i>), (1894) 2 Q. B. 189; 63 L. J. Q. B. 433; 70 L. T. 97; 10 T. L. R. 211, 405 - - - - -	59, 164, 182
London County Council <i>v.</i> Wandsworth and Putney Gas Co. (1900), 82 L. T. 562; 64 J. P. 500 - - - - -	197
London and County Tramways Co., Ltd., <i>In re</i> (1875), W. N. 49; L. J. Notes of Cases, 39 - - - - -	108
London and Eastern Counties Loan and Discount Co. <i>v.</i> Creasey, (1897) 1 Q. B. 768; 66 L. J. Q. B. 503; 76 L. T. 612; 45 W. R. 497; 13 T. L. R. 376 - - - - -	181
London and India Docks Co. <i>v.</i> Great Eastern Railway Co., (1902) 1 K. B. 568; 71 L. J. K. B. 369; 86 L. T. 339; 50 W. R. 461; 11 R. & C. T. C. 57; 18 T. L. R. 324 - - - - -	76
London and North Western Railway Co. <i>v.</i> Cannock Overseers (1863), 9 L. T. 325; 28 J. P. 181 - - - - -	77
London and North Western Railway Co. <i>v.</i> Evans, (1893) 1 Ch. 16; 62 L. J. Ch. 1; 2 R. 120; 67 L. T. 630; 41 W. R. 149; 9 T. L. R. 50 - - - - -	261
London and North Western Railway Co. <i>v.</i> Irthlingborough Overseers (1876), 35 L. T. 327; 40 J. P. 790 - - - - -	62, 78
London and North Western Railway Co. <i>v.</i> St. Pancras Vestry (1868), 17 L. T. 654 - - - - -	103
London and North Western Railway Co. <i>v.</i> Wigan Union (1876), 2 Nev. & Mac. 240 - - - - -	64, 70, 71
London and South Western Railway Co. <i>v.</i> Blackmore (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305 - - - - -	102
London and South Western Railway Co. <i>v.</i> Lambeth (1881), Ryde's Met. Rat. App. 258 - - - - -	73
London and South Western Railway Co. <i>v.</i> Myers (1881), 45 J. P. 731	197
London School Board <i>v.</i> Vestry of St. Mary, Islington (1875), 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. 504; 24 W. R. 137 - - - - -	104
London Street Tramways Co. <i>v.</i> London County Council, (1894) A. C. 489; 6 R. 317; 63 L. J. Q. B. 769; 71 L. T. 301; 10 T. L. R. 630 - - - - -	4, 181, 182
London Street Tramways Co. <i>v.</i> St. Mary, Islington (1886), Ryde's Rat. App. (1886-90), 147 - - - - -	64
London Tramways Co. <i>v.</i> Bailey (1877), 3 Q. B. D. 217; 47 L. J. M. C. 3; 37 L. T. 499; 26 W. R. 494 - - - - -	161, 162
London Tramways Co., Ltd. <i>v.</i> Lambeth (1874), 31 L. T. 319; Ryde's Met. Rat. App. 103- - - - -	49, 64, 66, 67, 68, 69, 71, 80, 81
London Tramways Co., Ltd. <i>v.</i> Lambeth (1876), Ryde's Met. Rat. App. 199 - - - - -	69

	PAGE
London Tramways Co. v. London County Council, (1898) A. C. 375; 67 L. J. Q. B. 559; 78 L. T. 361; 46 W. R. 609; 62 J. P. 675; 14 T. L. R. 360 - - - - -	183
Long Eaton Recreation Grounds Co., Ltd. v. Midland Railway Co., (1902) 2 K. B. 574; 71 L. J. K. B. 837; 86 L. T. 873; 50 W. R. 693; 67 J. P. 1; 18 T. L. R. 743 - - - - -	225
Lowe v. Volp, (1896) 1 Q. B. 256; 65 L. J. M. C. 43; 74 L. T. 143; 44 W. R. 442; 18 Cox, C. C. 253; 60 J. P. 232; 12 T. L. R. 206 - - - - -	201, 213
Lowestoft, Yarmouth and Southwold Tramways Co., In re (1877), 6 Ch. D. 484; 46 L. J. Ch. 393; 36 L. T. 578; 25 W. R. 525 - 108, 300, 301	
Lubbock v. British Bank of South America, Ltd., (1892) 2 Ch. 198; 61 L. J. Ch. 498; 67 L. T. 74; 41 W. R. 103; 8 T. L. R. 472 - 188	
Lynch v. Commissioners of Sewers of the City of London (1886), 32 Ch. D. 72; 55 L. J. Ch. 409; 54 L. T. 699; 50 J. P. 548 - - - 227	
McCarthy v. Dublin, Wicklow and Wexford Railway Co. (1870), I. R. 5 C. L. 244; 3 Ir. L. T. Newspaper, 648 - - - - -	202
McDermid v. Edinburgh Street Tramways Co., Ltd. (1884), 12 R. 15 - - - - -	248, 250
McEwen v. Edinburgh and District Tramway Co. (1899), 6 S. L. T. 479	254
McGraw v. Edinburgh Street Tramways Co. (1891), 28 S. L. R. 256 - 247	
Mackett v. Herne Bay Commissioners (1876), 35 L. T. 202; 37 L. T. 812 - - - - -	127
McLaughlin v. Glasgow Tramway and Omnibus Co., Ltd. (1897), 24 R. 992 - - - - -	252
McMahon v. Field (1881), 7 Q. B. D. 591; 50 L. J. Q. B. 552; 45 L. T. 381 - - - - -	252
Manchester Carriage and Tramways Co. v. Manchester Corporation (1902), 87 L. T. 504; 67 J. P. 14; 18 T. L. R. 779; (1903), 19 T. L. R. 439 (C. A.) - - - - -	184
Manchester Carriage and Tramways Co. v. Manchester Corporation (1902), 87 L. T. 678 - - - - -	187
Manchester Corporation and Manchester Carriage and Tramway Co. v. Andrews (1889), 5 T. L. R. 470 - - - - -	163, 264
Manchester Corporation v. Chapman (1868), 37 L. J. M. C. 173; 18 L. T. 640; 6 W. R. 974; 32 J. P. 582 - - - - -	104
Manchester, Middleton and District Tramways Co., In re, (1893) 2 Ch. 638; 62 L. J. Ch. 752; 3 R. 533; 68 L. T. 820; 41 W. R. 631; 9 T. L. R. 343 - - - - -	301
Manchester, Sheffield and Lincolnshire Railway Co. v. Anderson, (1898), 2 Ch. 394; 67 L. J. Ch. 568; 78 L. T. 821; 14 T. L. R. 489	228
Manchester, Sheffield and Lincolnshire Railway Co. v. Caister Union (1874), 2 Nev. & Mac. 53- - - - -	65, 71
Manchester, Sheffield and Lincolnshire Railway Co. v. Wood (1859), 2 E. & E. 344; 29 L. J. M. C. 29; 6 Jur. (N. S.) 70; 1 L. T. 31	353
Mann v. Edinburgh Northern Tramways Co., (1893) A. C. 69; 62 L. J. P. C. 74; 1 R. 86; 68 L. T. 96; 57 J. P. 245; 9 T. L. R. 102; 20 R. (H. L.) 7; 30 S. L. R. 140 - - - - -	128, 131
Mann v. Patent Cable Tramways Corporation (1886), 2 T. L. R. 454; 30 So. J. 370 - - - - -	131
Manning v. London, Worcester and South Wales Railway Co. (1867), 17 L. T. 68 - - - - -	130

	PAGE
Marfell <i>v.</i> South Wales Railway Co. (1860), 8 C. B. (N. S.) 535; 29 L. J. C. P. 315; 7 Jur. (N. S.) 290; 2 L. T. 629; 8 W. R. 765 -	235
Marsh <i>v.</i> Joseph, (1897) 1 Ch. 213; 66 L. J. Ch. 128; 75 L. T. 558; 45 W. R. 209; 13 T. L. R. 136 - - - - -	244
Marshall <i>v.</i> South Staffordshire Tramways Co., (1895) 2 Ch. 36; 64 L. J. Ch. 481; 12 R. 275; 72 L. T. 542; 43 W. R. 469; 2 Manson, 292; 11 T. L. R. 339 - - - 121, 131, 167, 174, 188, 193	
Martin <i>v.</i> North Metropolitan Tramways Co. (1887), 3 T. L. R. 600 -	248
Mathews <i>v.</i> London Street Tramways Co. (1888), 58 L. J. Q. B. 12; 60 L. T. 47; 52 J. P. 774; 5 T. L. R. 3 - - - - -	250
Matson <i>v.</i> Baird (1878), 3 A. C. 1082; 39 L. T. 304; 26 W. R. 835 -	88
Maxwell <i>v.</i> British Thompson Houston Co. (1902), 18 T. L. R. 278 -	230
Melbourne Corporation <i>v.</i> Melbourne Tramway and Omnibus Co., Ltd. (1894), 20 Vict. L. R. 36 - - - 60, 67, 68, 71, 72, 74, 75, 80	
Melbourne Tramway and Omnibus Co., Ltd. <i>v.</i> Fitzroy Corporation (1899), 25 Vict. L. R. 5; on appeal, (1901) A. C. 153; 70 L. J. P. C. 1; 83 L. T. 442; 17 T. L. R. 30 - 51, 60, 61, 64, 68, 69, 71, 72, 74, 80, 82	
Melhado <i>v.</i> Porto Alegre, &c. Railway Co. (1874), L. R. 9 C. P. 503; 43 L. J. C. P. 253; 31 L. T. 57; 23 W. R. 57 - - - - -	129
Mersey Docks and Harbour Board <i>v.</i> Birkenhead Union, (1901) A. C. 175; 70 L. J. K. B. 584; 84 L. T. 542; 49 W. R. 610; 65 J. P. 579; 17 T. L. R. 444 - - - - -	62
Mersey Docks and Harbour Board Trustees <i>v.</i> Cameron (1864), 11 H. L. C. (11 E. R.) 443; 20 C. B. (N. S.) 56; 35 L. J. M. C. 1; 11 Jur. (N. S.) 746; 12 L. T. 643; 13 W. R. 1069 - - - 55, 509	
Mersey Docks and Harbour Board Trustees <i>v.</i> Gibbs (1866), L. R. 1 H. L. 93; 11 H. L. C. (11 E. R.) 686; 35 L. J. Ex. 225; 12 Jur. (N. S.) 571; 14 L. T. 677; 14 W. R. 872 - - - 225, 244	
Metropolitan Asylum District <i>v.</i> Hill (1881), 6 A. C. 193; 50 L. J. Q. B. 353; 44 L. T. 653; 29 W. R. 617; 45 J. P. 664 - - - 225, 226	
Metropolitan District Railway Co. <i>v.</i> Sharpe (1880), 5 A. C. 425; 50 L. J. Q. B. 14; 43 L. T. 130; 28 W. R. 617; 44 J. P. 716 - - - 111	
Metropolitan Police District, Receiver for the, <i>v.</i> Bell (1872), L. R. 7 Q. B. 433; 41 L. J. M. C. 153 - - - - -	257
Middlesbrough Corporation <i>v.</i> Imperial Tramways Co., Ltd. (1901), "Times" Newspaper, May 11 - - - - -	144
Midland Railway Co. <i>v.</i> Badgworth Overseers (1864), 34 L. J. M. C. 25; 11 Jur. (N. S.) 14; 11 L. T. 303; 13 W. R. 202 - - - 53	
Midland Railway Co. <i>v.</i> Great Western Railway Co. (1873), L. R. 8 Ch. 841; 42 L. J. Ch. 438; 28 L. T. 718; 21 W. R. 657 - - - 121	
Midland Railway Co. <i>v.</i> Pontefract Union, (1901) 2 K. B. 189; 70 L. J. K. B. 691; 84 L. T. 536; 65 J. P. 455; 17 T. L. R. 439 - - - 74	
Mills <i>v.</i> Armstrong, The Bernina (1888), 13 A. C. 1; 57 L. J. P. 65; 51 L. T. 423; 36 W. R. 870; 6 Asp. M. C. 257; 4 T. L. R. 360 -	250
Milnes <i>v.</i> Huddersfield Corporation (1886), 11 A. C. 511; 56 L. J. Q. B. 1; 55 L. T. 617; 34 W. R. 761; 50 J. P. 676; 2 T. L. R. 821 - - - - -	209
Milton-next-Sittingbourne Commissioners <i>v.</i> Faversham District Highway Board (1867), 10 B. & S. 548 n. - - - - -	102
Mitcham, Ex parte (1864), 5 B. & S. 585; 33 L. J. Q. B. 325; 10 Jur. (N. S.) 1254; 10 L. T. 573; 21 W. R. 983 - - - - -	208
Monmouth Corporation and Monmouth Overseers, In re (1878), 38 L. T. 612 - - - - -	205
Montreal (City of) <i>v.</i> Montreal Street Railway Co. (1903), 19 T. L. R. 568 - - - - -	234

	PAGE
Mooney v. Edinburgh and District Tramways Co., Ltd. (1901) 4 F. 390; 39 S. L. R. 260; 9 S. L. T. 307; (1903), W. N. 161 -	255, 256
Moore v. Lambeth Waterworks Co. (1886), 17 Q. B. D. 462; 55 L. J. Q. B. 304; 55 L. T. 309; 34 W. R. 559; 50 J. P. 756; 2 T. L. R. 587 -	134
Moore v. Metropolitan Railway Co. (1872), L. R. 8 Q. B. 36; 42 L. J. Q. B. 23; 27 L. T. 579; 21 W. R. 145 -	216
Morgan v. Bell Telephone Co. of Canada (1896), Quebec Rapp. Jud. 11 C. S. 103 -	241
Morgan v. London General Omnibus Co. (1884), 13 Q. B. D. 832; 53 L. J. Q. B. 352; 51 L. T. 213; 32 W. R. 759; 48 J. P. 503 -	253, 254
Morley, In re (1875), L. R. 20 Eq. 17; 32 L. T. 524; 23 W. R. 532 -	107
Morris v. Tottenham and Forest Gate Railway Co., (1892) 2 Ch. 47; 61 L. J. Ch. 215; 66 L. T. 585; 40 W. R. 310; 8 T. L. R. 286 -	113
Mott v. Shoolbred (1875), L. R. 20 Eq. 22; 44 L. J. Ch. 380; 23 W. R. 545 -	211
Motteram v. Eastern Counties Railway Co. (1859), 7 C. B. (N. S.) 58; 29 L. J. M. C. 57; 6 Jur. (N. S.) 583; 1 L. T. 101; 8 W. R. 77 -	203
Mount v. Taylor (1868), L. R. 3 C. P. 645; 37 L. J. C. P. 325; 18 L. T. 476; 16 W. R. 866 -	197
Moxon v. London Tramways Co. (or R. v. Judge of Greenwich County Court) (1888), 57 L. J. Q. B. 446; 60 L. T. 248; 37 W. R. 132 -	251
Muir v. Forman's Trustees (1903), 40 S. L. R. 404 -	301
Murdoch v. London Street Tramways Co. (1879), "Times" Newspaper, March 27, March 30 -	144
Murgatroyd v. Blackburn and Over Darwen Tramway Co. (1887), 3 T. L. R. 451 -	248, 377
Myatt, Doe d. v. St. Helen's and Runcorn Gap Railway Co. (1841), 2 Q. B. 364; 11 L. J. Q. B. 6; 1 G. & D. 663; 2 Rail. Cas. 756; 6 Jur. 641 -	179
Nash v. Finlay (1901), 85 L. T. 682; 66 J. P. 183; 18 T. L. R. 92 -	200
National Carriage, &c. Insurance Union, Ex parte (1902), "Times" Newspaper, July 9 -	202
National Telephone Co. v. Baker (1893), 2 Ch. 186; 62 L. J. Ch. 699; 3 R. 318; 68 L. T. 283; 57 J. P. 373; 9 T. L. R. 246 -	233, 236, 239
National Telephone Co., Ltd. v. Constables of St. Peter Port, (1900) A. C. 317; 69 L. J. P. C. 74; 82 L. T. 398 -	229
Neath Canal Co. v. Ynisarwed Resolven Colliery Co. (1875), L. R. 10 Ch. 450 -	113
Neath and District Tramways Co., Ex parte (1895), 30 L. J. News- paper, 455 -	146
Neeld v. Hendon Urban District Council (1899), 81 L. T. 405; 63 J. P. 724; 16 T. L. R. 50 -	482
Newport Urban Sanitary Authority v. Graham (1882), 9 Q. B. D. 183; 47 L. T. 98; 31 W. R. 121; 47 J. P. 133 -	104
Normanton Gas Co. v. Pope (1883), W. N. 108; 52 L. J. Q. B. 629; 49 L. T. 798; 32 W. R. 134 -	261
North British Railway Co. v. Greig (1866), 4 M. 645; 38 Jur. 333; 1 S. L. R. 230 -	522
North British Railway Co. v. Park Yard Co., Ltd., (1898) A. C. 643; 24 R. 1148; 25 R. (H. L.), 47; 35 S. L. R. 950 -	113

	PAGE
North British Railway Co. <i>v.</i> Tod (1846), 12 Cl. & F. (8 E. R.), 722; 4 Rail. Cas. 449; 10 Jur. 975 - - - - -	227
North Eastern Railway Co. <i>v.</i> York Union, (1900) 1 Q. B. 733; 69 L. J. Q. B. 376; 82 L. T. 201; 64 J. P. 437 - - - - -	64
North London Tramways and Wood Green Local Board, <i>In re</i> (1889), "Times" Newspaper, June 11 - - - - -	325
North Metropolitan Tramways Co. <i>v.</i> London County Council (1895), W. N. 91; 72 L. T. 586; 43 W. R. 552; 59 J. P. 697; 11 T. L. R. 419; (1896), 60 J. P. 23; 12 T. L. R. 101 - - - - -	180, 191
North Metropolitan Tramways Co. <i>v.</i> London County Council, (1898) 2 Ch. 145; 67 L. J. Ch. 449; 78 L. T. 711; 46 W. R. 554; 62 J. P. 488; 14 T. L. R. 414 - - - - -	245
North Metropolitan Tramways Co. <i>v.</i> St. Mary, Islington (1874), Ryde's Met. Rat. App. 112 - - - - -	65, 66, 68, 71
North and South Western Junction Railway Co. <i>v.</i> Brentford Union (1887), 18 Q. B. D. 740; 13 A. C. 592; 56 L. J. M. C. 101; 58 L. J. M. C. 95; 57 L. T. 429; 60 L. T. 274; 35 W. R. 640; 51 J. P. 772; 3 T. L. R. 565 - - - - -	53
North Sydney Investment and Tramway Co., Ltd. <i>v.</i> Higgins, (1899) A. C. 263; 68 L. J. P. C. 42; 80 L. T. 303; 47 W. R. 481; 6 Manson, 321; 15 T. L. R. 232 - - - - -	128
Northumberland Avenue Hotel Co., <i>In re</i> , Sully's Case (1886), 33 Ch. D. 16; 54 L. T. 777; 2 T. L. R. 210 - - - - -	128
Norwood <i>v.</i> Toronto Corporation, 13 Can. L. T. 225 - - - - -	249
Ogilvie, <i>In re</i> (1871), L. R. 7 Ch. 174; 41 L. J. Ch. 336; 25 L. T. 860; 20 W. R. 226 - - - - -	180
Ogston <i>v.</i> Aberdeen District Tramways Co., (1897) A. C. 111; 66 L. J. P. C. 1; 75 L. T. 633; 61 J. P. 436; 13 T. L. R. 123; 24 R. (H. L.) 8; 34 S. L. R. 169 - - - - -	138, 144, 228, 232, 234, 611
Omnibus Conveyance Co., Ltd. <i>v.</i> Liverpool United Tramways and Omnibus Co. (1882), 26 So. J. 580; "Times" Newspaper, July 4	120
O'Neill, <i>Ex parte</i> , <i>In re</i> Portstewart Tramway Co., (1896) 1 I. R. 265	174
Orton <i>v.</i> North Metropolitan Tramways Co. (1874), "Times" News- paper, June 11 - - - - -	233
Over Darwen Corporation <i>v.</i> Lancashire JJ. (1887), 58 L. T. 51; 36 W. R. 140 - - - - -	147
Oxford, City of, Tramway Co. <i>v.</i> Sankey (1890), 54 J. P. 52; 6 T. L. R. 151 - - - - -	207
Pacey <i>v.</i> London Tramways Co. (1876), 2 Ex. D. 44 n.; 46 L. J. Ex. 698 n. - - - - -	251
Paddington Vestry <i>v.</i> Bramwell (1880), 44 J. P. 815 - - - - -	103
Paine <i>v.</i> Electric Illuminating & Power Co. of Long Island City (1901), 72 N. Y. S. 279; 64 App. Div. 477 - - - - -	240
Paris & New York Telegraph Co. <i>v.</i> Penzance Union (1884), 12 Q. B. D. 552; 53 L. J. M. C. 189; 50 L. T. 790; 32 W. R. 859; 48 J. P. 693 - - - - -	57
Park Yard Co., Ltd. <i>v.</i> North British Railway Co., (1898) A. C. 643; 24 R. 1148; 25 R. (H. L.) 47; 35 S. L. R. 950 - - - - -	113
Parker <i>v.</i> Bournemouth Corporation (1902), 86 L. T. 449; 66 J. P. 440; 18 T. L. R. 372 - - - - -	200

	PAGE
Parnaby <i>v.</i> Lancaster Canal Co. (1839), 11 A. & E. 223; 3 P. & D. 162; 9 L. J. Ex. 338 - - - - -	244
Pasmore <i>v.</i> Oswaldtwistle Urban Council, (1898) A. C. 387; 67 L. J. Q. B. 635; 78 L. T. 569; 62 J. P. 628; 14 T. L. R. 368 - - -	258
Pearce <i>v.</i> London Tramways Co. (1874), "Times" Newspaper, June 13 - - - - -	233
Pearson <i>v.</i> Cox (1877), 2 C. P. D. 369; 36 L. T. 495 - - - - -	232
Pegge <i>v.</i> Neath & District Tramways Co., (1895) 2 Ch. 508; (1896) 1 Ch. 684; 64 L. J. Ch. 737; 65 L. J. Ch. 536; 13 R. 762; 73 L. T. 25; 44 W. R. 72; 2 Manson, 474; 11 T. L. R. 470 - - -	145, 175, 257
Penny <i>v.</i> Wimbledon Urban District Council, (1899) 2 Q. B. 72; 68 L. J. Q. B. 704; 80 L. T. 615; 47 W. R. 565; 63 J. P. 406; 15 T. L. R. 348 - - - - -	230, 232
Perham <i>v.</i> Portland General Electric Co. (1898), 33 Or. 451; 72 Am. St. R. 730 - - - - -	240, 241
Pickard <i>v.</i> Smith (1861), 10 C. B. (N. S.) 470; 4 L. T. 470 - - -	230
Pictou Municipality <i>v.</i> Geldert, (1893) A. C. 524; 63 L. J. P. C. 37; 1 R. 447; 69 L. T. 510; 42 W. R. 114; 9 T. L. R. 638 - - -	147
Pidler <i>v.</i> Berry (1888), 59 L. T. 230; 53 J. P. 6; 4 T. L. R. 627 - -	200
Pilkingon <i>v.</i> Cooke (1847), 16 M. & W. 615; 17 L. J. Ex. 141 - -	197
Pimlico, Peckham & Greenwich Street Tramway Co. <i>v.</i> Greenwich Union (1873), L. R. 9 Q. B. 9; 43 L. J. M. C. 29; 29 L. T. 605; 22 W. R. 87 - - - - -	50
Pinchin <i>v.</i> London & Blackwall Railway Co. (1854), 5 De G. M. & G. 851; 1 K. & J. 36; 3 Eq. R. 433; 24 L. J. Ch. 417; 1 Jur. (N. S.) 241; 3 W. R. 125 - - - - -	113, 514
Piper <i>v.</i> Chappell (1845), 14 M. & W. 624; 9 Jur. 601 - - -	200, 204, 212
Plymouth, Stonehouse & Devonport Tramway Co. <i>v.</i> The General Tolls Co., Ltd. (1898), 75 L. T. 467; 13 T. L. R. 74; 14 T. L. R. 531 - - - - -	160
Police, Commissioners of <i>v.</i> Cartman, (1896) 1 Q. B. 655; 65 L. J. M. C. 113; 74 L. T. 726; 44 W. R. 637; 18 Cox, C. C. 341; 60 J. P. 357; 12 T. L. R. 334 - - - - -	244
Pontypridd & Rhondda Valleys Tramways Co., Ltd., In re (1889), 58 L. J. Ch. 536; 37 W. R. 570 - - - - -	172, 192, 266
Portsmouth, Borough of (Kingston, Fratton & Southsea), Tramways Co., In re, (1892) 2 Ch. 362; 61 L. J. Ch. 462; 66 L. T. 671; 40 W. R. 553; 8 T. L. R. 516 - - - - -	174
Portstewart Tramway Co., In re, Ex parte O'Neill, (1896) 1 I. R. 265 - - - - -	174
Potteries, Shrewsbury & North Wales Railway Co., In re (1883), 25 Ch. D. 251; 53 L. J. Ch. 556; 50 L. T. 104; 32 W. R. 300 - - -	300
Poulton <i>v.</i> London & South Western Railway Co. (1867), L. R. 2 Q. B. 534; 36 L. J. Q. B. 294; 8 B. & S. 616; 17 L. T. 11; 16 W. R. 309 - - - - -	217
Pound <i>v.</i> Plumstead Board of Works (1871), L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. 461; 20 W. R. 177 - - - - -	104
Powell <i>v.</i> Fall (1880), 5 Q. B. D. 597; 49 L. J. Q. B. 428; 43 L. T. 562 - - - - -	226
Powell Duffryn Steam Coal Co. <i>v.</i> Taff Vale Railway Co. (1874), L. R. 9 Ch. 331; 43 L. J. Ch. 575; 30 L. T. 208 - - - - -	120
Prahran Corporation <i>v.</i> Melbourne Tramway Trust (1888), 14 Vict. L. R. 952 - - - - -	103
Preston <i>v.</i> Liverpool, Manchester & Newcastle-upon-Tyne Junction Railway Co. (1856), 5 H. L. C. (10 E. R.) 605; 25 L. J. Ch. 421; 2 Jur. (N. S.) 241; 4 W. R. 383 - - - - -	128

	PAGE
Preston Corporation <i>v.</i> Fullwood Local Board (1885), 53 L. T. 718; 34 W. R. 196; 50 J. P. 228; 2 T. L. R. 134 - - -	137
Pryce <i>v.</i> Monmouthshire Canal and Railway Companies (1879), 4 A. C. 197; 49 L. J. Ex. 130; 40 L. T. 630; 27 W. R. 666 -	194
Pugh <i>v.</i> Golden Valley Railway Co. (1880), 12 Ch. D. 274; 15 Ch. D. 330; 48 L. J. Ch. 666; 49 L. J. Ch. 721; 42 L. T. 863; 28 W. R. 863 - - - - -	151
Quarman <i>v.</i> Burnett (1840), 6 M. & W. 499; 9 L. J. Ex. 308; 4 Jur. 969 - - - - -	229, 230
Radley <i>v.</i> London and North Western Railway Co. (1876), 1 A. C. 754; 46 L. J. Ex. 573; 35 L. T. 637; 25 W. R. 147 - - -	243
Railways, Commissioner for, <i>v.</i> Toohey (1884), 9 A. C. 720; 53 L. J. P. C. 91; 51 L. T. 582 - - - - -	165, 247
Railway Sleepers Supply Co., <i>In re</i> (1885), 29 Ch. D. 204; 54 L. J. Ch. 720; 52 L. T. 731; 33 W. R. 595; 1 T. L. R. 399 -	138, 139
Ramsay <i>v.</i> Thomson (1881), 9 R. 140; 19 S. L. R. 125 - - -	263
Rapier <i>v.</i> London Tramways Co., (1893) 2 Ch. 588; 63 L. J. Ch. 36; 2 R. 448; 69 L. T. 361 - - - - -	233
Rattee <i>v.</i> Norwich Electric Tramway Co. (1902), 18 T. L. R. 562 -	248
Rayson <i>v.</i> South London Tramways Co., (1893) 2 Q. B. 304; 62 L. J. Q. B. 593; 4 R. 522; 69 L. T. 491; 42 W. R. 21; 17 Cox C. C. 691; 58 J. P. 20; 9 T. L. R. 579 - - - - -	212, 216
Readhead <i>v.</i> Midland Railway Co. (1869), L. R. 4 Q. B. 379; 38 L. J. Q. B. 169; 20 L. T. 628; 17 W. R. 737 - - - - -	235
Receiver for the Metropolitan Police District <i>v.</i> Bell (1872), L. R. 7 Q. B. 433; 41 L. J. M. C. 153 - - - - -	257
Reedie <i>v.</i> London and North Western Railway Co. (1849), 4 Ex. 244; 6 Rail. Cas. 184; 20 L. J. Ex. 65 - - - - -	230
R. <i>v.</i> Barnes Overseers (1896), 13 T. L. R. 25 - - - - -	272
R. <i>v.</i> Barry District Council (1900), 16 T. L. R. 565 - - - - -	208
R. <i>v.</i> Bedford Union (<i>or</i> R. <i>v.</i> London and North Western Railway Co.) (1874), L. R. 9 Q. B. 134; 43 L. J. M. C. 81; 29 L. T. 910; 22 W. R. 263 - - - - -	78
R. <i>v.</i> Bell (1798), 7 T. R. 598 - - - - -	50
R. <i>v.</i> Beverley Gas Works (1837), 6 A. & E. 645; 6 L. J. M. C. 84; 1 N. & P. 646 - - - - -	55
R. <i>v.</i> Birmingham and Staffordshire Gas Light Co. (1837), 6 A. & E. 634; 6 L. J. M. C. 92; 1 N. & P. 691 - - - - -	57
R. <i>v.</i> Blackpool Corporation (1889), 34 L. J. Newspaper, 691 - - -	208
R. <i>v.</i> Cambridge Gas Light Co. (1838), 8 A. & E. 73; 3 N. & P. 362; 7 L. J. M. C. 50 - - - - -	50
R. <i>v.</i> Charlesworth (1851), 16 Q. B. 1012; 3 Cox, C. C. 174 -	91, 137
R. <i>v.</i> Clear (1825), 4 B. & C. 899; 4 L. J. (O. S.) K. B. 53; 7 D. & R. 393 - - - - -	145
R. <i>v.</i> Cooper (<i>or</i> R. <i>v.</i> Hull Justices) (1854), 4 E. & B. 29; 23 L. J. M. C. 183; 23 L. T. 231; 2 W. R. 620 - - - - -	55
R. <i>v.</i> Cottle (1851), 16 Q. B. 412; 20 L. J. M. C. 162; 15 Jur. 721 -	102
R. (Cork and Muskerry Light Railway Co., Ltd.) <i>v.</i> Co. Cork Treasurer (1889), 24 L. R. I. 415 - - - - -	68

	PAGE
R. (Dublin and Blessington Steam Tramway Co.) <i>v.</i> Co. Dublin Grand Jury and Finance Committee (1892), 32 L. R. I. 644 - - -	68
R. <i>v.</i> Cross (1812), 3 Camp. 224 - - - - -	211
R. <i>v.</i> Croydon and Norwood Tramways Co. (1886), 18 Q. B. D. 39; 56 L. J. Q. B. 125; 56 L. T. 78; 35 W. R. 299; 51 J. P. 420; 3 T. L. R. 32 - - - - -	144, 159
R. <i>v.</i> Dickenson (1668), 1 Wms. Saund. 134 and 135b, note (g) -	210
R. <i>v.</i> East and West India Docks and Birmingham Junction Railway Co. (1853), 2 E. & B. 466; 22 L. J. Q. B. 380; 17 Jur. 1181; 1 W. R. 409 - - - - -	151, 152
R. <i>v.</i> Eastern Counties Railway Co. (1863), 4 B. & S. 58; 32 L. J. M. C. 174; 9 Jur. (N. S.) 1339; 8 L. T. 419; 11 W. R. 694 -	65
R. <i>v.</i> Essex JJ. (1888), 4 T. L. R. 676 - - - - -	144
R. <i>v.</i> Fletton Overseers (1861), 3 E. & E. 450; 30 L. J. M. C. 89; 7 Jur. (N. S.) 518; 3 L. T. 689; 9 W. R. 309 - - - - -	65
R. <i>v.</i> Grand Junction Railway Co. (1844), 4 Q. B. 18; 4 Rail. Cas. 1; D. & M. 237; 13 L. J. M. C. 94; 8 Jur. 508 - - - - -	62
R. <i>v.</i> Great Western Railway Co. (1846), 6 Q. B. 179; 15 L. J. M. C. 80; 10 Jur. 134 - - - - -	72, 73, 77
R. <i>v.</i> Great Western Railway Co. (1852), 15 Q. B. 379, 1085; 21 L. J. M. C. 84; 16 Jur. 217 - - - - -	67
R. <i>v.</i> Great Western Railway Co. (1892), 62 L. J. Q. B. 572; 9 R. 1; 69 L. T. 572 - - - - -	117
R. <i>v.</i> Greenwich County Court (Judge of) (<i>or</i> Moxon <i>v.</i> London Tramways Co.) (1888), 57 L. J. Q. B. 446; 60 L. T. 248; 37 W. R. 132 - - - - -	251
R. <i>v.</i> Halstead Overseers (1867), 32 J. P. 118 - - - - -	58
R. <i>v.</i> Hardy (1871), L. R. 1 C. C. 278; 40 L. J. M. C. 62; 23 L. T. 785; 19 W. R. 359; 11 Cox, C. C. 656 - - - - -	211
R. <i>v.</i> Hull Justices (<i>or</i> R. <i>v.</i> Cooper) (1854), 4 E. & B. 29; 23 L. J. M. C. 183; 23 L. T. 231; 2 W. R. 620 - - - - -	55
R. <i>v.</i> Jolliffe (1787), 2 T. R. 90 - - - - -	50
R. <i>v.</i> Judge of Greenwich County Court (<i>or</i> Moxon <i>v.</i> London Tramways Co.) (1888), 57 L. J. Q. B. 446; 60 L. T. 248; 37 W. R. 132 -	251
R. <i>v.</i> Liverpool Corporation (1873), 28 L. T. 500; 21 W. R. 674; 37 J. P. 773 - - - - -	187
R. <i>v.</i> Llantrissant (1869), L. R. 4 Q. B. 354; 38 L. J. M. C. 93; 20 L. T. 364; 17 W. R. 671 - - - - -	78
R. <i>v.</i> London and North Western Railway Co. (<i>or</i> R. <i>v.</i> Bedford Union) (1874), L. R. 9 Q. B. 134; 43 L. J. M. C. 81; 29 L. T. 910; 22 W. R. 263 - - - - -	78
R. <i>v.</i> London and South Western Railway Co. (1842), 1 Q. B. 558; 2 Rail. Cas. 629; 2 G. & D. 49; 11 L. J. M. C. 93; 6 Jur. 686 -	62
R. <i>v.</i> London, Brighton and South Coast Railway Co. (1851), 15 Q. B. 313; 6 Rail. Cas. 440; 20 L. J. M. C. 124; 15 Jur. 372 - - - - -	64, 65, 67, 77
R. <i>v.</i> London Corporation (1867), L. R. 2 Q. B. 292; 16 L. T. 280 -	111
R. <i>v.</i> Longton Gas Co., Ltd. (1860), 2 E. & E. 651; 29 L. J. M. C. 118; 6 Jur. (N. S.) 601; 2 L. T. 14; 8 W. R. 293; 8 Cox, C. C. 317	137
R. (Holywood) <i>v.</i> Louth Justices, (1900) 2 I. R. 714; 34 Ir. L. T. R. 131	254
R. <i>v.</i> Middlesex JJ. (1845), 3 D. & L. 107; 14 L. J. M. C. 139; 9 Jur. 758 - - - - -	138
R. <i>v.</i> Mile End Old Town Overseers (1847), 10 Q. B. 208; 3 New Sess. Cases 13; 16 L. J. M. C. 184; 11 Jur. 985 - - - - -	63, 71, 77
R. <i>v.</i> Morris (1830), 1 B. & Ad. 441; 9 L. J. (O. S.) K. B. 55 -	91, 137

	PAGE
R. v. Newport Dock Co. (1862), 2 B. & S. 708; 31 L. J. M. C. 266; 9 Jur. (N. S.) 73; 6 L. T. 456 - - - - -	76
R. v. Newport Local Board (1863), 3 B. & S. 341; 32 L. J. M. C. 97; 9 Jur. (N. S.) 746; 11 W. R. 263 - - - - -	104
R. v. North Metropolitan Tramways Co. (1889), "Times" Newspaper, March 7 - - - - -	229
R. v. North Staffordshire Railway Co. (1860), 3 E. & E. 392; 30 L. J. M. C. 68; 3 L. T. 554; 9 W. R. 235; 7 Jur. (N. S.) 363 - - -	70
R. v. Paget (1881), 8 Q. B. D. 151; 31 L. J. M. C. 9; 45 L. T. 794; 30 W. R. 336; 46 J. P. 151 - - - - -	214
R. v. Parrot (1794), 5 T. R. 593 - - - - -	55
R. v. Pease (1832), 4 B. & Ad. 30; 2 L. J. M. C. 26; 1 Nev. & Mac. 690 - - - - -	233
R. v. Prince (1875), L. R. 2 C. C. 154; 44 L. J. M. C. 122; 32 L. T. 700; 24 W. R. 76; 13 Cox, C. C. 138 - - - - -	221
R. v. Rhymney Railway Co. (1869), L. R. 4 Q. B. 276; 10 B. & S. 1198; 38 L. J. M. C. 75; 17 W. R. 530 - - - - -	61
R. v. Russell (1805), 6 East, 427; 2 Smith, 424 - - - - -	211
R. v. St. Luke's, Chelsea, Vestry (1871), L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. 914; 20 W. R. 209 - - - - -	111
R. v. St. Mary Abbott's, Kensington, (1891) 1 Q. B. 378; 60 L. J. M. C. 52; 64 L. T. 240; 39 W. R. 278; 55 J. P. 502; 7 T. L. R. 248 - - - - -	468
R. v. St. Pancras Vestry (1863), 3 B. & S. 810; 32 L. J. M. C. 146; 9 Jur. (N. S.) 1102 - - - - -	65, 68
R. v. Severn and Wye Railway Co. (1819), 2 B. & A. 646 - - - - -	145
R. v. Sheffield Gas Consumers' Co. (1853), 21 L. T. (O. S.) 153; 18 Jur. 146 n. - - - - -	137
R. v. Sherford (1867), L. R. 2 Q. B. 503; 8 B. & S. 596; 36 L. J. M. C. 113; 16 L. T. 663; 15 W. R. 1035 - - - - -	55, 61
R. v. Shropshire J.J. (1838), 8 A. & E. 173 - - - - -	138
R. v. Southampton Dock Co. (1851), 14 Q. B. 587; 20 L. J. M. C. 155; 6 Rail. Cas. 428; 15 Jur. 268 - - - - -	68, 72
R. v. Stephens (1866), L. R. 1 Q. B. 702; 35 L. J. Q. B. 251; 7 B. & S. 710; 12 Jur. (N. S.) 961; 14 L. T. 593; 14 W. R. 859 -	243
R. v. Struvé (1895), 59 J. P. 584 - - - - -	257
R. v. Thomas (1870), 22 L. T. 138 - - - - -	118
R. v. Toronto Street Railway Co. (1865), 24 Upp. Can. Q. B. 454 - - -	133
R. v. Train (1862), 2 B. & S. 640; 31 L. J. M. C. 169; 3 F. & F. 22; 8 Jur. (N. S.) 1151; 10 W. R. 539; 9 Cox, C. C. 180 - - -	91, 137
R. v. United Kingdom Electric Telegraph Co. (1862), 2 B. & S. 647 n.; 31 L. J. M. C. 166; 3 F. & F. 732; 8 Jur. (N. S.) 1153; 6 L. T. 378; 10 W. R. 538; 9 Cox, C. C. 174 - - -	137, 229
R. v. West Middlesex Waterworks Co. (1859), 1 E. & E. 716; 28 L. J. M. C. 135; 5 Jur. (N. S.) 1159 - - - - -	50
R. v. Wycombe Railway Co. (1867), L. R. 2 Q. B. 310; 36 L. J. Q. B. 121; 8 B. & S. 259; 15 L. T. 610; 15 W. R. 489 - - -	151
Reigate Corporation v. Hart (1868), L. R. 3 Q. B. 244; 37 L. J. M. C. 70; 9 B. & S. 129; 18 L. T. 237; 16 W. R. 896 - - -	256
Reynolds v. Ashby & Son, Ltd., (1903) 1 K. B. 87; 72 L. J. K. B. 51; 87 L. T. 640; 51 W. R. 405; 19 T. L. R. 70 - - - - -	58
Reynolds v. Thomas Tilling, Ltd. (1903), 19 T. L. R. 539 - - -	243
Richards v. Swansea Improvement and Tramways Co. (1878), 9 Ch. D. 425; 38 L. T. 833; 26 W. R. 764 - - - - -	112

	PAGE
Ritchie <i>v.</i> Dundee Police Commissioners (1886), 13 R. (J. C.) 63; 1 White Just. Ca. 139; 23 S. L. R. 663 - - - - -	143
River Wear Commissioners <i>v.</i> Adamson (1877), 2 A. C. 743; 47 L. J. Q. B. 193; 37 L. T. 543; 26 W. R. 217 - - - - -	223
Roberts <i>v.</i> Woodward, (1890) 25 Q. B. D. 412; 59 L. J. M. C. 129; 63 L. T. 200; 38 W. R. 770; 17 Cox, C. C. 139; 55 J. P. 116 - - -	243
Robinson <i>v.</i> Barton-Eccles Local Board (1883), 8 A. C. 798; 53 L. J. Ch. 226; 50 L. T. 57; 32 W. R. 249; 48 J. P. 276 - - -	25, 93
Robinson <i>v.</i> Kilvert (1889), 41 Ch. D. 88; 58 L. J. Ch. 392; 61 L. T. 60; 37 W. R. 545 - - - - -	237
Roe <i>v.</i> Birkenhead, Lancashire and Cheshire Junction Railway Co. (1851), 7 Ex. 36; 21 L. J. Ex. 9; 6 Rail. Cas. 695 - - -	219
Ross (A.-G.) <i>v.</i> Montreal City Passenger Railway Co. (1879), 24 Lower Canada Jurist, 60; 10 Revue Légale, 27; 2 Legal Notes, 338 - - - - -	106, 260
Rotherham Alum and Chemical Co., In re (1883), 25 Ch. D. 103; 53 L. J. Ch. 290; 50 L. T. 219; 32 W. R. 131 - - -	129
Rowe <i>v.</i> N. Y. & N. J. Telegraph Co. (1901, N. J.), 48 Atl. Rep. 523 - - - - -	241
Ruddy <i>v.</i> Newark Electric Light and Power Co. (1899), 46 Atl. Rep. 110; 63 N. J. Law, 357 - - - - -	240
Rutherford <i>v.</i> Somerville (1901), 4 F. (J. C.) 15; 39 S. L. R. 276; 9 S. L. T. 213 - - - - -	208
Ruthin and Cerrig-y-Druidion Railway Act, In re (1886), 32 Ch. D. 438; 56 L. J. Ch. 30; 55 L. T. 237; 34 W. R. 581; 2 T. L. R. 644 - - - - -	300
Rylands <i>v.</i> Fletcher (1868), L. R. 1 Ex. 265; L. R. 3 H. L. 330; 35 L. J. Ex. 154; 37 L. J. Ex. 161; 19 L. T. 220; 12 Jur. (N. S.) 603; 14 W. R. 799 - - - - -	236, 237, 238, 239
Sadler <i>v.</i> South Staffordshire and Birmingham District Steam Tram- ways Co. (1889), 23 Q. B. D. 17; 58 L. J. Q. B. 421; 37 W. R. 582; 53 J. P. 694 - - - - -	232, 234
St. Giles', Camberwell, Vestry <i>v.</i> Crystal Palace Co., (1892) 2 Q. B. 33; 61 L. J. Q. B. 802; 66 L. T. 840; 40 W. R. 648; 57 J. P. 5; 8 T. L. R. 203 - - - - -	25
St. Helen's District Tramways Co. <i>v.</i> Wood (1891), 60 L. J. M. C. 141; 56 J. P. 70 - - - - -	201, 354
St. Luke's Vestry <i>v.</i> North Metropolitan Tramways Co. (1876), 1 Q. B. D. 760; 35 L. T. 329 - - - - -	139, 145, 159
St. Mary's, Battersea, Vestry <i>v.</i> County of London, &c. Electric Lighting Co., Ltd., (1899) 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31; 15 T. L. R. 175 - - - - -	136
Sandiman <i>v.</i> Breach (1827), 7 B. & C. 96; 5 L. J. (O. S.) K. B. 298; 9 D. & R. 796 - - - - -	162
Saunders <i>v.</i> South Eastern Railway Co. (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761; 43 L. T. 281; 29 W. R. 56; 44 J. P. 781 - - -	200, 202, 203, 212, 213, 214
Savage <i>v.</i> North Metropolitan Tramways Co. (1873), "Times" News- paper, Nov. 13 - - - - -	133
Scott <i>v.</i> Lord Ebury (1867), L. R. 2 C. P. 255; 36 L. J. C. P. 161; 15 L. T. 506; 15 W. R. 517 - - - - -	128, 129
Scottish North Eastern Railway Co. <i>v.</i> Stewart (1859), 3 Macq. 382; 21 D. (H. L.) 5; Paterson 838; 31 Jur. 445 - - -	128

	PAGE
Sculcoates Union <i>v.</i> Dock Company at Kingston-upon-Hull (1895), A. C. 136; 11 R. 74; 64 L. J. M. C. 49; 71 L. T. 242; 43 W. R. 623; 59 J. P. 612 - - - - -	61
Senhouse <i>v.</i> Christian (1787), 1 T. R. 560 - - - - -	112
Seymour <i>v.</i> Greenwood (1861), 6 H. & N. 359; 7 H. & N. 355; 30 L. J. Ex. 189, 327; 4 L. T. 833; 9 W. R. 518, 785 - - -	242
Sharp <i>v.</i> Gray (1833), 9 Bing. 457; 2 L. J. C. P. 45; 2 M. & Sc. 621 - - - - -	235
Sharpe <i>v.</i> Metropolitan District Railway Co. (1880), 5 A. C. 425; 50 L. J. Q. B. 14; 43 L. T. 130; 28 W. R. 617; 44 J. P. 716 -	111
Shaw <i>v.</i> Edinburgh and Glasgow Railway Co. (1863), 2 M. 142; 36 Jur. 73 - - - - -	252
Sheffield United Gas Light Co. <i>v.</i> Sheffield Overseers (1863), 4 B. & S. 135; 32 L. J. M. C. 169; 9 Jur. (N. S.) 623; 8 L. T. 692; 11 W. R. 1064 - - - - -	71
Shelfer <i>v.</i> City of London Electric Lighting Co. (1895), 1 Ch. 287; 64 L. J. Ch. 216; 12 R. 112; 72 L. T. 34; 43 W. R. 238; 11 T. L. R. 137 - - - - -	226, 227
Sherras <i>v.</i> De Rutzen, (1895) 1 Q. B. 918; 64 L. J. M. C. 218; 15 R. 388; 72 L. T. 839; 43 W. R. 526; 59 J. P. 440; 11 T. L. R. 369 - - - - -	221, 243
Shrewsbury (Earl of) <i>v.</i> North Staffordshire Railway Co. (1865), L. R. 1 Eq. 593; 35 L. J. Ch. 156; 12 Jur. (N. S.) 63; 13 L. T. 648; 14 W. R. 220 - - - - -	130
Simmonds <i>v.</i> Fulham Vestry, (1900) 2 Q. B. 188; 69 L. J. Q. B. 560; 82 L. T. 497; 48 W. R. 574; 64 J. P. 548 - - - - -	25
Simpson <i>v.</i> Glasgow Corporation (1902), 4 F. 611; 39 S. L. R. 371; 9 S. L. T. 364 - - - - -	258
Simpson <i>v.</i> Teignmouth and Shaldon Bridge Co., (1903) 1 K. B. 405; 72 L. J. K. B. 204; 88 L. T. 117; 51 W. R. 545; 67 J. P. 65; 1 L. G. R. 235; 19 T. L. R. 225 - - - - -	197
Sinclair <i>v.</i> Caithness Flagstone Quarrying Co. (1881), 6 A. C. 340; 7 R. 1117; 8 R. (H. L.) 78; 18 S. L. R. 466 - - - - -	113
Skegness and St. Leonard's Tramways Co., <i>In re</i> (1888), 41 Ch. D. 215; 58 L. J. Ch. 737; 60 L. T. 406; 37 W. R. 225; 1 Meg. 127; 5 T. L. R. 166 - - - - -	129
Slattery <i>v.</i> Naylor (1888), 13 A. C. 446; 57 L. J. P. C. 73; 59 L. T. 41; 36 W. R. 897; 4 T. L. R. 426 - - - - -	199, 200
Smith <i>v.</i> Butler (1885), 16 Q. B. D. 349; 34 W. R. 486; 50 J. P. 260; 2 T. L. R. 69 - - - - -	198, 207
Smith <i>v.</i> Kynnersley, (1903) 1 K. B. 788; 72 L. J. K. B. 357; 88 L. T. 449; 51 W. R. 548; 67 J. P. 125; 1 L. G. R. 393; 19 T. L. R. 335 - - - - -	197
Smith <i>v.</i> North Metropolitan Tramways Co. (1891), 55 J. P. 630; 7 T. L. R. 459 - - - - -	246
Snark, <i>The</i> , (1906) P. 105; 69 L. J. P. 41; 82 L. T. 42; 48 W. R. 279; 9 Asp. M. C. 50; 16 T. L. R. 160 - - - - -	232
Southampton Tramways Co. and Southampton Corporation, <i>In re</i> (1899), 80 L. T. 236; 81 L. T. 652; 63 J. P. 788; 15 T. L. R. 217; 16 T. L. R. 38 - - - - -	185
South Staffordshire Tramways Co. <i>v.</i> Sickness and Accident Assur- ance Association, (1891) 1 Q. B. 402; 60 L. J. Q. B. 260; 7 T. L. R. 14 - - - - -	252
Southwark and Vauxhall Water Co. <i>v.</i> Quick (1878), 3 Q. B. D. 315; 47 L. J. Q. B. 258 - - - - -	251
Stagg <i>v.</i> Medway (Upper) Navigation Co., (1903) 1 Ch. 169; 72 L. J. Ch. 177; 19 T. L. R. 143 - - - - -	178, 179

	PAGE
<i>Staley v. Castleton Overseers</i> (1864), 5 B. & S. 505; 33 L. J. M. C. 178; 10 Jur. (N. S.) 1147; 10 L. T. 606; 12 W. R. 911 - -	61
<i>State of Wisconsin Telephone Co. v. Janesville Street Railroad Co.</i> (1894, Wis.), 57 N. W. Rep. 970 - - - - -	239
<i>Stationers' Company v. Salisbury</i> (1693), Comb. 221 - - -	200
<i>Stebbing v. Metropolitan Board of Works</i> (1870), L. R. 6 Q. B. 37; 40 L. J. Q. B. 1 - - - - -	184
<i>Steele v. Midland Railway Co.</i> (1866), L. R. 1 Ch. 275 - - -	127
<i>Steele v. North Metropolitan Railway Co.</i> (1867), L. R. 2 Ch. 237; 36 L. J. Ch. 540 - - - - -	127
<i>Stevens, In re</i> (1898), 62 J. P. 810 - - - - -	207
<i>Stevens v. Jeacocke</i> (1847), 11 Q. B. 731; 17 L. J. Q. B. 163 - -	210
<i>Stevens v. Midland Counties Railway Co.</i> (1854), 10 Ex. 352; 23 L. J. Ex. 328 - - - - -	215
<i>Steward v. North Metropolitan Tramways Co.</i> (1886), 16 Q. B. D. 556; 55 L. J. Q. B. 157; 54 L. T. 35; 34 W. R. 316; 2 T. L. R. 263 - - - - -	146
<i>Stewart v. Glasgow Tramway and Omnibus Co., Ltd.</i> (1883), 21 S. L. R. 47 - - - - -	248, 249, 250
<i>Stockport District Waterworks Co. v. Manchester Corporation</i> (1863), 7 L. T. 545 - - - - -	137
<i>Stockport and Hyde Highway Board v. Cheshire County Council</i> (1891), 61 L. J. Q. B. 22; 65 L. T. 85; 39 W. R. 606; 55 J. P. 808 - - - - -	94, 141
<i>Stockport Union v. London and North Western Railway Co.</i> (1898), 67 L. J. Q. B. 335 - - - - -	73
<i>Stockton and Darlington Railway Co. v. Barrett</i> (1844), 11 Cl. & F. (S E. R.), 590 - - - - -	194
<i>Stockton and Middlesbrough Water Board v. Kirkleatham Local Board,</i> (1893) A. C. 444; 63 L. J. Q. B. 56 - - - - -	182
<i>Stokell v. Baldwin</i> (1892), 8 T. L. R. 346 - - - - -	207
<i>Stourbridge Canal Co. v. Whealey</i> (1831), 2 B. & Ad. 792 - -	194
<i>Strickland v. Hayes</i> , (1896) 1 Q. B. 290; 65 L. J. M. C. 55; 74 L. T. 137; 44 W. R. 398; 12 T. L. R. 199 - - - - -	200, 202
<i>Sutton Harbour Improvement Co. v. Plymouth Guardians</i> (1890), 63 L. T. 772; 55 J. P. 232; 6 T. L. R. 400 - - - - -	52
<i>Swansea Improvements and Tramway Co. and Swansea and Mumbles Railway Co. and Railway Commissioners, In re</i> (1880), "Times" Newspaper, Apr. 24 - - - - -	165
<i>Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority</i> , (1892) 1 Q. B. 357; 61 L. J. M. C. 124; 66 L. T. 119; 40 W. R. 283; 56 J. P. 248 - - - - -	1, 75, 253, 307
<i>Sydney Municipal Council v. Young</i> , (1898) A. C. 457; 67 L. J. P. C. 40 - - - - -	259
<i>Tarry v. Ashton</i> (1876), 1 Q. B. D. 314; 45 L. J. Q. B. 260; 34 L. T. 97; 24 W. R. 581 - - - - -	230
<i>Taylor v. Directors, &c. of the Chichester and Midhurst Railway Co.</i> (1870), L. R. 4 H. L. 628; 39 L. J. Ex. 217; 23 L. T. 657 -	128
<i>Taylor v. Goodwin</i> (1879), 4 Q. B. D. 228; 48 L. J. M. C. 104; 40 L. T. 458; 27 W. R. 489 - - - - -	197
<i>Terrell v. Hutton</i> (1854), 4 H. L. C. (10 E. R.), 1091; 23 L. J. Ch. 345; 18 Jur. 707 - - - - -	129

	PAGE
Thomas <i>v.</i> Sutters, (1900) 1 Ch. 10; 69 L. J. Ch. 27; 81 L. T. 469; 48 W. R. 133; 16 T. L. R. 7 - - - - -	198
Thompson <i>v.</i> Brighton Corporation, (1894) 1 Q. B. 332; 63 L. J. Q. B. 181; 70 L. T. 206; 42 W. R. 161; 10 T. L. R. 98 - - - - -	134
Thompson <i>v.</i> Buffalo Railway Co. (1895), 145 N. Y. 176 - - - - -	249
Thompson <i>v.</i> City Glass Bottle Co., (1902) 1 K. B. 233; 71 L. J. K. B. 145; 85 L. T. 661; 18 T. L. R. 69 - - - - -	181
Thomson <i>v.</i> Edinburgh and District Tramways Co., Ltd. (1901), 3 F. 355; 38 S. L. R. 263; 8 S. L. T. 277 - - - - -	251
Thorogood <i>v.</i> Bryan (1849), 8 C. B. 115; 18 L. J. C. P. 336 - - - - -	250
Tilleard, <i>In re</i> (1863), 3 De G. J. & S. 519; 32 L. J. Ch. 765; 9 Jur. (N. S.), 1217; 8 L. T. 587; 11 W. R. 764 - - - - -	129
Tilson <i>v.</i> Warwick Gas Light Co. (1825), 4 B. & C. 962; 4 L. J. (O. S.) K. B. 53; 7 D. & R. 376 - - - - -	129
Toronto Corporation <i>v.</i> Toronto Street Railway Co. (1888), 15 Ont. App. 30 - - - - -	207
Toronto Corporation <i>v.</i> Toronto Street Railway Co. (1894), 23 Can. S. C. R. 198 - - - - -	147
Toronto Corporation <i>v.</i> Virgo, (1896) A. C. 88; 65 L. J. P. C. 4; 73 L. T. 449 - - - - -	199
Toronto Street Railway Co. <i>v.</i> Fleming (1875), 37 Upp. Can. R. 116 - - - - -	51
Toronto Street Railway Co. <i>v.</i> Toronto Corporation, (1893) A. C. 511; 63 L. J. P. C. 10; 1 R. 418 - - - - -	147, 184, 259
Touche <i>v.</i> Metropolitan Railway Warehousing Co. (1871), L. R. 6 Ch. 371; 40 L. J. Ch. 496 - - - - -	127
Tralee and Dingle Light Railway Co., (1894) 2 I. R. 115 - - - - -	68
Tuckett <i>v.</i> Isle of Thanet Electric Tramways and Lighting Co., Ltd. (1901), "Times" Newspaper, Dec. 21 - - - - -	499
Turpin <i>v.</i> Somerton, &c. Tramway Co. (1900), W. N. 94 - - - - -	181, 301
Tyne Boiler Works Co. <i>v.</i> Longbenton Overseers <i>or</i> Tynemouth Union (1886), 18 Q. B. D. 81; 56 L. J. M. C. 8; 55 L. T. 825; 35 W. R. 110; 51 J. P. 420; 3 T. L. R. 134 - - - - -	58
Tynemouth Borough Tramway Co., Ltd., <i>In re</i> (1875), 33 L. T. 8 - - - - -	108
Uckfield Rural District Council <i>v.</i> Crowborough District Water Co., (1899) 2 Q. B. 664; 68 L. J. Q. B. 1009; 81 L. T. 539; 48 W. R. 63; 16 T. L. R. 3 - - - - -	197
United Electric Railroad Co. <i>v.</i> Shelton (1891), 89 Tenn. 423 - - - - -	241
Uxbridge and Rickmansworth Railway Co., <i>In re</i> , (1890) 43 Ch. D. 536; 59 L. J. Ch. 409; 62 L. T. 347; 38 W. R. 644 - - - - -	300
Vale of Clyde Tramway Co. <i>v.</i> Munro (1883), 21 S. L. R. 273 - - - - -	70
Vallance <i>v.</i> Falle (1884), 13 Q. B. D. 109; 53 L. J. Q. B. 459; 51 L. T. 158; 32 W. R. 769; 48 J. P. 519; 5 Asp. M. C. 280 - - - - -	210
Vaughan <i>v.</i> Taff Vale Railway Co. (1860), 5 H. & N. 679; 29 L. J. Ex. 247; 6 Jur. (N. S.) 899; 2 L. T. 394; 8 W. R. 549 - - - - -	233
Verner <i>v.</i> General and Commercial Investment Trust, (1894) 2 Ch. 239; 63 L. J. Ch. 456; 7 R. 170; 70 L. T. 516; 1 Manson, 36; 10 T. L. R. 393 - - - - -	188
Vernon <i>v.</i> Vestry of St. James, Westminster (1880), 16 Ch. D. 449; 50 L. J. Ch. 81; 44 L. T. 229; 29 W. R. 222 - - - - -	226
Victoria Corporation <i>v.</i> Patterson, (1899) A. C. 615; 68 L. J. P. C. 128; 81 L. T. 270 - - - - -	140

	PAGE
<i>Wagner v. Brooklyn Heights Railroad Co.</i> (1902), 74 N. Y. S. 809; 69 App. Div. 349 - - - - -	240
<i>Wakefield Local Board v. Lee</i> (1876), 1 Ex. D. 336; 35 L. T. 481 -	104
<i>Walker v. London Tramways Co., Ltd.</i> (1879), 23 So. J. 680 - -	188
<i>Wallasey Tramway Co. v. Wallasey Local Board</i> (1883), 47 J. P. 821	208
<i>Wallasey United Tramway & Omnibus Co. v. Wallasey Urban District Council</i> (1899), "Times" Newspaper, Nov. 17; 23 M. C. C. 56; (1900), 18 T. L. R. 152 - - - - -	185
<i>Wallis v. Harrison</i> (1842), 9 Q. B. 940; 11 L. J. Ex. 449 - - -	113
<i>Wandsworth Board of Works v. United Telephone Co., Ltd.</i> (1884), 13 Q. B. D. 904; 53 L. J. Q. B. 449; 51 L. T. 148; 32 W. R. 776; 48 J. P. 676 - - - - -	229
<i>Wandsworth District Board of Works v. Pretty</i> , (1899) 1 Q. B. 1; 68 L. J. Q. B. 193; 47 W. R. 256; 63 J. P. 132 - - - - -	197
<i>Ward v. Atlantic & Pacific Telegraph Co.</i> (1877), 71 N. Y. 81; 27 Am. R. 10 - - - - -	240
<i>Ward v. General Omnibus Co.</i> (1873), 42 L. J. C. P. 265; 27 L. T. 761; 21 W. R. 358 - - - - -	246
<i>Waterford, Lismore & Fermoy Railway Co., In re</i> (1870), I. R. 4 Eq. 490; 4 Ir. L. T. Newspaper, 622 - - - - -	301
<i>Watkins v. Milton-next-Gravesend Overseers or Gravesend and Milton Overseers</i> (1868), L. R. 3 Q. B. 350; 37 L. J. M. C. 73; 18 L. T. 601; 16 W. R. 1059 - - - - -	57
<i>Watson v. North Metropolitan Tramways Co.</i> (1886), 3 T. L. R. 273 -	251
<i>Wayde or Wayte v. Carr</i> (1823), 2 D. & R. 255; 1 L. J. (O. S.) K. B. 63	264
<i>Wear River Commissioners v. Adamson</i> (1877), 2 A. C. 743; 47 L. J. Q. B. 193; 37 L. T. 543; 26 W. R. 217 - - - - -	223
<i>Weld v. South Western Railway Co.</i> (1863), 32 Beav. 340; 33 L. J. Ch. 142; 9 Jur. (N. S.) 510; 8 L. T. 13; 11 W. R. 448 - - -	111
<i>Wemyss v. Hopkins</i> (1875), L. R. 10 Q. B. 378; 44 L. J. M. C. 101; 33 L. T. 9; 23 W. R. 691 - - - - -	197
<i>West Donegal Railway Co., In re</i> (1890), 24 Ir. L. T. R. 42 - 108, 180, 301	
<i>Western Union Telegraph Co. v. State</i> (1896), 82 Md. 293 - -	240
<i>Western Union Telegraph Co. v. Thorn</i> (1894, U. S. C. C., N. J.), 64 Fed. Rep. 287 - - - - -	241
<i>West Riding & Grimsby Railway Co. v. Wakefield Local Board</i> (1864), 33 L. J. M. C. 174; 12 W. R. 1076 - - - - -	230
<i>White v. Morley</i> , (1899) 2 Q. B. 34; 68 L. J. Q. B. 702; 80 L. T. 761; 47 W. R. 583; 63 J. P. 550; 15 T. L. R. 360 - - - -	198
<i>Whitehead v. Reader</i> , (1901) 2 K. B. 48; 70 L. J. K. B. 546; 84 L. T. 514; 49 W. R. 562; 65 J. P. 403; 17 T. L. R. 387 - - -	242
<i>Whitfield v. South Eastern Railway Co.</i> (1858) E. B. & E. 115; 27 L. J. Q. B. 229; 4 Jur. (N. S.) 688; 6 W. R. 545 - - -	215
<i>Wickham v. New Brunswick & Canada Railway Co.</i> (1865), L. R. 1 P. C. 64; 35 L. J. P. C. 6; 12 Jur. (N. S.) 34; 14 L. T. 311; 14 W. R. 251 - - - - -	179
<i>Wigan Junction Railway Act, 1875, In re</i> (1875), L. R. 10 Ch. 541; 44 L. J. Ch. 774 - - - - -	299
<i>Wilkinson v. Hull, &c. Railway & Dock Co.</i> (1882), 20 Ch. D. 323; 51 L. J. Ch. 788; 46 L. T. 455; 30 W. R. 617 - - - -	227
<i>Wilkinson and Marshall v. Newcastle-upon-Tyne Corporation</i> (1902), 18 T. L. R. 332 - - - - -	105, 426
<i>Will v. Edison Electric Illuminating Co.</i> (1901), 200 Pa. 540 -	241, 242
<i>Williams v. East India Co.</i> (1802), 3 East, 192 - - - -	221

	PAGE
Williams <i>v.</i> London & North Western Railway Co., (1900) 1 Q. B. 760; 69 L. J. Q. B. 531; 82 L. T. 287; 64 J. P. 372; 16 T. L. R. 292	76
Williams <i>v.</i> St. George's Harbour Co. (1858), 2 De G. & J. 547; 27 L. J. Ch. 691; 4 Jur. (N. S.) 1066; 6 W. R. 609	128
Williams <i>v.</i> Wandsworth Board of Works (1884), 13 Q. B. D. 211; 53 L. J. M. C. 187; 32 W. R. 908; 48 J. P. 439	104
Wilson <i>v.</i> Glasgow Tramways Co. (1878), 5 R. 981; 15 S. L. R. 656	254
Wilson <i>v.</i> Leeds Tramway Co. (1883), "Times" Newspaper, June 30	218
Winby <i>v.</i> Manchester, &c. Steam Tramways Co. (1891), 8 R. P. C. 61	134
Winch <i>v.</i> Birkenhead, &c. Railway Co. (1852), 5 De G. & S. 562; 16 Jur. 1035	120, 121, 192
Winnipeg Street Railway Co. <i>v.</i> Winnipeg Electric Street Railway Co., (1894) A. C. 615; 64 L. J. P. C. 10; 6 R. 525; 71 L. T. 127	259
Wittleder <i>v.</i> Citizens' Illuminating Co. of Brooklyn (1900), 62 N. Y. S. 297; 47 App. Div. 410	241
Wolverhampton Corporation <i>v.</i> British Electric Traction Co., Ltd. (1900), "Times" Newspaper, Nov. 17, Nov. 30; 22 M. C. C. 545	186
Wolverhampton New Waterworks Co. <i>v.</i> Hawkesford (1859), 6 C. B. (N.S.) 336; 28 L. J. C. P. 242; 5 Jur. (N.S.) 1104; 7 W. R. 464	257
Wolverhampton Tramways Co. <i>v.</i> Great Western Railway Co. (1886), 56 L. J. Q. B. 190; 56 L. T. 892; 3 T. L. R. 197	94, 140, 152, 156
Wood <i>v.</i> Diamond Electric Co. (1898), 185 Pa. 529	241
Wood <i>v.</i> Great Eastern Railway Co. (1885), W. N. 175	114
Woodard <i>v.</i> Eastern Counties Railway Co. (1868), 30 L. J. M. C. 196; 7 Jur. (N.S.) 971; 4 L. T. 336; 9 W. R. 660	214
Woelf <i>v.</i> Third Avenue Railroad Co. (1902), 74 N. Y. S. 336; 67 App. Div. 605	230
Wyatt <i>v.</i> Metropolitan Board of Works (1862), 11 C. B. (N. S.) 744; 31 L. J. C. P. 217	129
Yarmouth <i>v.</i> France (1887), 19 Q. B. D. 647; 57 L. J. Q. B. 7; 36 W. R. 281; 4 T. L. R. 561	181, 254
Yarmouth and Gorleston Tramways, In re (1881), 25 So. J. 794	174
Yarmouth and Ventnor Railway Co., In re (1871), W. N. 236	118
Ydun, The, (1899) P. 236; 68 L. J. P. 101; 81 L. T. 10; 8 Asp. M. C. 551; 15 T. L. R. 302, 361	245
York and North Midland Railway Co. <i>v.</i> R. (1853), 1 E. & B. 858; 22 L. J. Q. B. 225; 7 Rail. Cas. 459; 1 C. L. R. 119; 17 Jur. 630; 1 W. R. 358	117
Young <i>v.</i> Great Eastern Railway Co. (1888), 5 T. L. R. 112	216

TABLE OF PROCEEDINGS

BEFORE THE COURT OF REFEREES, THE LIGHT RAILWAY COMMISSIONERS, THE BOARD OF TRADE AND THE COMMISSIONERS APPOINTED UNDER THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899.

[NOTE.—The references set against the Light Railway Cases are to the Annual Reports of the Board of Trade, and to Mr. Oxley's Reports. As to these references, see further the note to Light Railways Act, 1896, *post*, p. 449.]

	PAGE
Aberdare Case (1900), Rep. vi. 39; Oxley 227	- 451
Aberdeen Suburban Tramways Provisional Order (1902), 39 S. L. R. 872	17, 48, 315
Abergavenny and Monmouth Case (1898), Rep. iii. 1; iv. 20; Oxley, 44	- 470
Accrington Corporation Tramways Bill (1882), 3 Cl. & R. 117	- 32
Airdrie and Coatbridge Tramways Bill (1900), 2 S. & A. 1	- 17, 36, 152
Arizona Copper Co., Ltd., Provisional Order (1901), 38 S. L. R. 862	48, 316, 421
Ayr Burgh Bill (1899), 1 S. & A. 297	- 28
Barnsley and District Case (1899), Rep. v. 31; vii. 2; Oxley, 231	- 452, 471
Barry Railway Bill (1893), R. & S. 240	- 36
Basingstoke and Alton Case (1897), Rep. i. 11; Oxley, 1	- 467
Bath and District Case (1900), Rep. vi. 3; Oxley, 242	- 452
Bath and District Case (1900), Rep. viii. 2	- 457
Belfast and Northern Counties Railway Bill (1899), 1 S. & A. 298	- 43
Bere Alston and Calstock Case (1899), Rep. vi. 4; Oxley, 102	- 46, 469
Bexhill and St. Leonards Tramroads Bill (1899), 1 S. & A. 301	- 20, 28
Birkenhead Corporation Bill (1897), 1 S. & A. 148	- 37, 41, 45, 120
Birkenhead Corporation (Ferries) Bill (1897), 1 S. & A. 152	- 45
Blackpool Improvement Bill (1892), R. & S. 167	- 36
Bourne Valley Case (1899), Rep. vi. 7; Oxley, 100	- 468, 491
Brackenhill Case (1899—1900), Rep. vi. 8; vii. 5; Oxley, 99	- 470, 471, 481
Brentford and District Tramways Bill (1885), R. & M. 5	- 35, 40, 152
Brentford, Isleworth and Twickenham Tramways Bill (1879), 2 Cl. & R. 139	- 18, 23, 24, 30

	PAGE
Bridgwater, Langport and Glastonbury Case (1899), Rep. vi. 9;	
Oxley, 109 - - - - -	476
Burnham, Berrow and Brent Knoll Case (1898), Rep. iv. 4; Oxley,	
62 - - - - -	465
Burnley Corporation (Tramways, &c.) Bill (1898), 1 S. & A. 232 - 35, 40,	
42, 120, 186	
Burton and Ashby Case (1902), Rep. (1903) xi. 2; xii. 2 - -	476
Bury Corporation Bill (1899), 1 S. & A. 303 - - - -	42
Bury Improvement Bill (1885), R. & M. 9 - - - -	44
Cawood, Wistow and Selby (Extension) Case (1899), Rep. v. 6;	
Oxley, 96 - - - - -	505
Chatham, Rochester and Gillingham Case (1898), Rep. iv. 5; Oxley,	
156 - - - - -	467
Cheltenham and District Case (1897), Rep. i. 1; Oxley, 120 - -	471
Cheltenham and District Case (1899), Rep. v. 7; Oxley, 217 - -	472
City of Bath Case (1900), Rep. vii. 9 - - - - -	457
Coatbridge and Airdrie Case (1898), Rep. iii. 30; Oxley, 149 - 46, 469,	
473, 475, 476	
Colchester Case (1899), Rep. v. 8; Oxley, 202 - - - -	467
Coleford Railway Bill (1872), 2 Cl. & St. 277 - - - -	20, 40
Colne and Trawden Case (1898), Rep. v. 9, 31; Oxley, 208 - -	471
Commercial Road East (Tramways) Bill (1871), 2 Cl. & St. 168 - 34, 38	
Corporation of London Foreign Cattle Market, Deptford, Case (1897),	
Rep. ii. 2; Oxley, 120 - - - - -	451, 452
County of Hertford, No. 1, Case (1900), Rep. vii. 10 - 454, 471, 475	
County of Middlesex Case (1900), Rep. vi. 11 - - - -	471
County of Middlesex, No. 2, Case (1900), Rep. vii. 14 - - -	467
County of Middlesex (Extensions), No. 4, Case (1901), Rep. x. 5 - 454	
Cranbrook, Tenterden and Ashford Case (1899), Rep. v. 11; Oxley,	
84 - - - - -	46, 477, 491
Crewe Case (1897), Rep. i. 2; Oxley, 111 - - - -	451
Crewe Case (1901), Rep. x. 6 - - - - -	452
Cromarty and Dingwall Case (1897), Rep. i. 21; Oxley, 10 - -	471
Crowland and District (Amendment) Case (1901), Rep. x. 7 - 470, 516	
Cuckmere Valley Case (1898), Rep. iii. 7; Oxley, 56 - - -	469
Darlington Case (1899), Rep. vi. 12 - - - - -	471
Dartford District Case (1897), Rep. ii. 3; vi. 13; Oxley, 49 - -	470
Derby and Ashbourne Case (1897-8), Rep. ii. 4; iv. 7; Oxley, 122 - 482	
Derby, Nottingham and District Case (1902), Rep. (1903) xi. 12 - 476	
Devon, South Hams, Case (1900), Rep. vii. 15 - - - -	466
Didcot and Watlington (Amendment) Case (1902), Rep. (1903) xiii. 5 - 516	
Didcot and Watlington (Extension) Case (1899), Rep. v. 13; Oxley, 74- 513	
Dornoch Case (1897), Rep. i. 28; Oxley, 6 - - 462, 491, 507, 508	
Dover, St. Margaret's, and Martin Mill Case (1902), Rep. (1903) xii. 15 509	
Dublin Central Station Railway Bill (1872), 2 Cl. & St. 283 - -	42
Dublin Southern District Tramways Bill (1893), R. & S. 242 - 16, 18, 26	

	PAGE
Dublin Southern District Tramways Bill (1898), 1 S. & A. 240 -	16, 36
Dublin Tramways Bill (1871), 2 Cl. & St. 142 - - -	15, 21
Dublin Tramways Bill (1873), 1 Cl. & R. 13 - - -	15, 23
Dublin United Tramways (Electrical Power) Bill (1897), 1 S. & A. 157	16
Dudley and District Case (1897), Rep. II. 5; Oxley, 135 -	453, 473
Dudley, Halesowen and District (Extensions) Case (1902), Rep. (1903) XIII. 7 - - - - -	515
Dundee and Broughty Ferry Case (1898), Rep. IV. 32; Oxley, 176 -	452, 473, 476, 493
Edinburgh Corporation Bill (1897), 1 S. & A. 161 - - -	39
Edinburgh Corporation Tramways Bill (1893), R. & S. 250 -	16, 18, 34, 41, 120, 186
Edinburgh Extension and Sewerage Bill (1885), R. & M. 23 -	44
Edinburgh Improvement and Tramways Bill (1896), 1 S. & A. 80 -	34, 41, 120
Edinburgh Northern Tramways Bill (1884), 3 Cl. & R. 397 -	25, 30, 38
Edinburgh Street Tramways Bill (1870), 2 Cl. & St. 85 - -	37
Edinburgh Street Tramways Bill (1873), 1 Cl. & R. 16 -	26, 28, 29
Edinburgh Street Tramways Bill (1892), R. & S. 184 - -	34, 186
Edinburgh Street Tramways Bill (1893), R. & S. 262 - -	35
Edinburgh Street Tramways Bill (1896), 1 S. & A. 83 -	34, 39, 121, 152
Elsenham, Thaxted and Bardfield Case (1897), Rep. I. 6; Oxley, 19-	461
Erewash Valley Case (1902), Rep. (1903) XII. 17 - - -	476
Falkirk and District Tramways Provisional Order (1901), 38 S. L. R. 863 - - - - -	98, 322
Finchley Case (1900), Rep. VI. 15; Oxley, 249- - -	451, 472
Finchley, Hendon and District Case (1898), Rep. III. 8; Oxley, 130 -	469
Finchley, Hendon and District Case (1899), Rep. V. 19; Oxley, 212- - - - -	452, 465
Finchley, Hendon, Edgware and District Case (1899), Rep. VI. 16; Oxley, 246 - - - - -	466, 527
Flamborough and Bridlington Case (1897), Rep. I. 7; Oxley, 126 -	481
Folkestone, Sandgate and Hythe Tramways Bill (1891), R. & S. 102 -	36
Forsinard, Melvich and Port Skerra Case (1898), Rep. I. 22; Oxley, 9 - - - - -	507, 508
Fraserburgh and St. Combs Case (1897), Rep. II. 25; Oxley, 28 -	460, 461
Gifford and Garvald Case (1896), Rep. I. 23; Oxley, 31 - -	466, 505
Glasgow and Ibrox Tramway Bill (1877), 2 Cl. & R. 12 - -	32
Glasgow, Bothwell, Hamilton and Wishaw Tramways Bill (1872), 2 Cl. & St. 281 - - - - -	32
Glasgow, Coatbridge and Airdrie Tramways Bill (1871), 2 Cl. & St. 199	14
Glasgow Corporation Tramways Bill (1878), 2 Cl. & R. 95 -	33, 98, 138
Glasgow Corporation Tramways Bill (1899), 1 S. & A. 318 -	42, 186
Glasgow Corporation (Tramways and General) Provisional Order (1901), 38 S. L. R. 865 - - - - -	48, 316
Glasgow District Tramways Bill (1900), 2 S. & A. 9- - -	17
Glasgow Subway Bill (1887), R. & M. 151 - - -	43

	PAGE
Gloucester and District Case (1900), Rep. vii. 18; (1902), Rep. (1903) xii. 5, 9 - - - - -	471
Goole, Epworth and Owston Railway Bill (1883), 3 Cl. & R. 285 -	43
Gosforth and Ponteland Case (1899), Rep. v. 20; Oxley, 95 -	480
Gower Case (1897), Rep. i. 16; Oxley, 13 - - - - -	510
Great Northern Railway (Ireland) Bill (1900), 2 S. & A. 9 -	32, 38
Great Western Railway and Swansea Canal Companies' Bill (1872), 2 Cl. & St. 247 - - - - -	15
Great Western Railway Bill (1876), 1 Cl. & R. 221 - - - -	15
Greenock and Port Glasgow Tramways Bill (1899), 1 S. & A. 322 -	16, 27, 32
Greenock and Port Glasgow Tramways Extension Provisional Order (1902), 39 S. L. R. 880 - - - - -	17, 48
Grimsby and Saltfleetby Case (1898), Rep. iii. 10; Oxley, 45 -	471, 472
Hamilton, Motherwell and Wishaw Case (1899), Rep. v. 49; Oxley, 237 - - - - -	476
Hastings, Bexhill and District Case (1898), Rep. iii. 11; Oxley, 162	510
Hastings, Bexhill and District Case (1899), Rep. v. 22; Oxley, 227 -	451, 452, 481
Hayling Island Case (1900), Rep. viii. 7 - - - - -	466
Hayling Island Case (1901), Rep. ix. 10 - - - - -	469
Hebridean Case (1898), Rep. iv. 34 - - - - -	461
Highland Railway Co. Provisional Order (1901), 38 S. L. R. 860 -	48
Hounslow, Slough and Datchet Case (1902), Rep. (1903) xi. 20 -	468
Hyde and Dukinfield Case (1900), Rep. viii. 8 - - - -	452
Inverness and Lochend Case (1899), Rep. v. 50; Oxley, 110 - -	469
Ipswich and Felixstowe Railway and Pier Bill (1874), 1 Cl. & R. 84 -	44
Isle of Axholme Case (1899), Rep. iii. 13; Oxley, 55 - - - -	488
Kelvedon, Coggeshall and Halstead Case (1898), Rep. iv. 13; Oxley, 70 - - - - -	470, 472, 480
Kelvedon, Tiptree and Tollesbury Case (1897), Rep. ii. 7; Oxley, 59 - - - - -	461, 462
Kidderminster and Stourport Electric Tramways Bill (1896), 1 S. & A. 108 - - - - -	35
King's Cross and City Tramways Bill (1878), 2 Cl. & R. 106 -	27, 29
Kingston, Surbiton and District Case (1900), Rep. vii. 20 - -	465
Kingston, Surbiton and District (Extensions) Case (1900), Rep. viii. 11	465
Lansdowne Road, Rathmines and Rathgar Tramway Bill (1879), 2 Cl. & R. 177 - - - - -	40
Lastingham and Sinnington Case (1897), Rep. ii. 8; Oxley, 24 -	469
Lauder Case (1897), Rep. i. 23; Oxley, 3 - - - - -	458
Lea Bridge, Leyton and Walthamstow Tramways Bill (1881), 3 Cl. & R. 71 - - - - -	24, 35, 40

	PAGE
Leeds Corporation (Consolidation and Improvement) Bill (1893), R. & S. 281 - - - - -	36
Leek, Caldun Low and Hartington Case (1897), Rep. II. 9; Oxley, 51 - - - - -	472
Leigh (Lancashire) Corporation Bill (1903) - - - - -	19
Lincolnshire and Northamptonshire Case (1897), Rep. II. 10; Oxley, 27 - - - - -	472
Liverpool and Prescot Case (1898), Rep. IV. 14; Oxley, 180 -45, 76, 473	
Liverpool Tramways Bill (1868), 1 Cl. & St. 120, 142; 19 L. T. 55 - - - - -	29, 37
Liverpool Tramways Bill (1880), 2 Cl. & R. 270 - - - - -	39
Llandudno and Colwyn Bay Case (1897), Rep. II. 20; Oxley, 131 -471, 477	
Llandudno and Colwyn Bay (Deviation and Amendment) Case (1902), Rep. (1903) XI. 44 - - - - -	471
Llanfair and Beaumaris Case (1898), Rep. III. 25; Oxley, 155 - -	465
London, Barnet, Edgware and Enfield Case (1898), Rep. IV. 15; Oxley, 175 - - - - -	465
London County Cases (1900), Rep. VII. 22—24 - - - - -	481
London County Council Tramways (No. 1) Bill (1900), 2 S. & A. 19 - 27, 37	
London County Council (Tramways and Street Widenings) Bill (1901), 2 S. & A. 57 - - - - -	17, 22, 27, 31
London Street Tramways Bill (1870), 2 Cl. & St. 85 - - -14, 25, 37	
London Street Tramways Bill (1871), 2 Cl. & St. 181 - - - - 28	
London Street Tramways (Extensions) Bill (1882), 3 Cl. & R. 185 - - 27	
London Street Tramways (Kensington, Westminster and City Lines) Bill (1871), 2 Cl. & St. 188 - - - - -	27
London Tramways (Extensions) Bill (1889), R. & M. 268- - - 27, 29	
London United Tramways Case (1898), Rep. IV. 17; Oxley, 164 -451, 469, 473, 475	
London United Tramways Case (1899), Rep. V. 27; Oxley, 224 - 452, 476	
London United Tramways (Extensions) Bill (1900), 2 S. & A. 21 - 17, 30, 33	
London United Tramways Bill (1901), 2 S. & A. 60 - - -30, 33, 36	
Loughborough and District Case (1900), Rep. VII. 26 - - - - 456	
Luton, Dunstable and District Case (1902), Rep. (1903) XI. 23 - - 476	
Lynnouth and Minehead Case (1898), Rep. IV. 18; Oxley, 54 - - -469	
Manchester, Bury and Rochdale Tramway (Extension) Bill (1884), 3 Cl. & R. 427 - - - - -	33
Mansfield and District Case (1900), Rep. VII. 28, VIII. 12 - - - - 471	
Marton, Southam and Stockton Tramroad Bill (1889), R. & M. 280 - - 33	
Merthyr Tydfil Case (1898), Rep. IV. 30; Oxley, 183 - - - 472, 475	
Metropolitan and Metropolitan District Railways (City Lines and Extensions) Bill (1880), 2 Cl. & R. 292 - - - - -	43
Mid-Anglian Case (1900), Rep. VII. 29, VIII. 13 - - - - -	471
Middlesbrough, Stockton and Thornaby Case (1899), Rep. V. 28; Oxley, 234 - - - - -	452
Middleton Case (1898), Rep. III. 17; Oxley, 137 - - - 472, 527, 532	
Midland Railway Bill (1880), 2 Cl. & R. 295 - - - - -	30, 39
Midland and South Western Junction Railway (Ludgershall and Military Camps) Case (1898), Rep. IV. 19; Oxley, 43 - - - 469	

	PAGE
Mid-Suffolk Case (1899), Rep. vi. 26; Oxley, 91 - - -	470
Monmouth and Abergavenny Case (1897), Rep. iii. 18; Oxley, 44 -	467
Mumbles Railway and Pier Bill (1889), R. & M. 285 - - -	43, 44
Musselburgh Case (1899), Rep. v. 51; Oxley, 219 - - -	476
Nelson Case (1899), Rep. v. 30, 31, vi. 27; Oxley, 203 -	452, 456, 457, 472
Newcastle-upon-Tyne Improvement Bill (1892), R. & S. 215 - -	32
Newport Corporation Bill (1903) - - - - -	19
North British Railway Bill (1897), 1 S. & A. 199 - - -	31
North Eastern Metropolitan Tramways Bill (1871), 2 Cl. & St. 167 -	19
North Holderness Case (1897), Rep. ii. 12; Oxley, 33 - - -	475
North Lincolnshire Case (1899), Rep. v. 32; Oxley, 80 - - -	488
North London Tramways Bill (1870), 2 Cl. & St. 82 - -	14, 18, 19
North London Tramways Bill (1884), 3 Cl. & R. 450 - - -	32, 35
North Metropolitan Tramways Bill (1870), 2 Cl. & St. 89 -	14, 28, 38
North Metropolitan Tramways Bill (1871), 2 Cl. & St. 175 -	21, 27, 28
North Metropolitan Tramways Bill (1874), 1 Cl. & R. 111 - -	26
North Metropolitan Tramways (New Works, &c.) Bill (1877), 2 Cl. & R. 56 - - - - -	15, 18, 27
North Metropolitan Tramways Bill (1886), R. & M. 122 - -	22, 38
Norwich and Dereham Case (1900), Rep. viii. 15 - - -	470
Norwich Tramways Bill (1879), 2 Cl. & R. 210 - - -	21
Nuneaton and District Case (1900), Rep. vi. 28; Oxley, 247 -	456, 481
Nutley, Crowborough and Groombridge Case (1899), Rep. v. 34; Oxley, 103 - - - - -	470, 511
Oldham, Ashton-under-Lyne, Hyde and District (Extensions) Case (1900), Rep. vii. 32 - - - - -	465
Orpington, Cudham and Tatsfield Case (1899), Rep. v. 35 - -	470
Paddington, St. John's Wood and Holborn Street Tramways Bill (1871), 2 Cl. & St. 193 - - - - -	22, 27, 28
Paisley and District Tramways Bill (1884), 3 Cl. & R. 455 - -	15
Paisley Case (1898), Rep. iv. 35; Oxley, 182 - - -	452, 470
Penarth and Cardiff Case (1898), Rep. iii. 26; Oxley, 161 - -	452
Penzance, Newlyn and West Cornwall Case (1899), Rep. v. 26, 36; Oxley, 78 - - - - -	470, 481
Pewsey and Salisbury Case (1897), Rep. ii. 14; Oxley, 39 -	471, 473, 475
Plymouth Tramways Bill (1889), R. & M. 293 - - -	31
Poole and District Case (1898), Rep. iv. 24; Oxley, 173 - -	465
Portmadoc, Beddgelert and Snowdon Case (1898), Rep. iv. 31; Oxley, 69 - - - - -	493
Potteries Case (1897), Rep. i. 13; Oxley, 116 - - -	472
Preston and Lytham Case (1901), Rep. x. 13 - - -	470
Preston and Lytham Case (1902), Rep. (1903) xi. 30 - - -	476
Pwllheli, Nevin and Porthainlleyn Case (1901), Rep. ix. 25 -	461
Ramsbottom, Edenfield and Rawtenstall Case (1902), Rep. (1903) xi. 31 - - - - -	376
Ramsbottom (Lancashire) Urban District Council Bill (1903) - -	19

	PAGE
Ramsgate and Margate Tramways Bill (1882), 3 Cl. & R. 199 -	32, 33
Rawmarsh Urban District Council (Tramways) Bill (1900), 2 S. & A.	
28 - - - - -	32
Redditch and District Case (1898), Rep. iv. 25; Oxley, 185	454, 470, 488
Rhondda Valley Case (1901), Rep. vi. 40; ix. 26 - - -	476
Rochester, Chatham and District Case (1898), Rep. iii. 22; iv. 26;	
Oxley, 156 - - - - -	471
Rotherham and Laughton Case (1901), Rep. x. 14 - - -	452
Rothsay Tramways (Extension) Draft Provisional Order (1902),	
39 S. L. R. 369 - - - - -	420
Ryde and Newport Railway Bill (1872), 2 Cl. & St. 297 - - -	30
Ryde and Sea View Case (1899), Rep. vi. 33; Oxley, 226 - - -	469
St. Helen's and District Tramways Bill (1881), 3 Cl. & R. 94 - - -	32
St. Helen's Corporation Bill (1898), 1 S. & A. 282 - - -	35
Salford Corporation Bill (1897), 1 S. & A. 218 - - -	40, 41, 120
Sheppey Case (1898), Rep. iii. 23; Oxley, 53 - - -	471, 472
South Devon Railway Bill (1874), 1 Cl. & R. 112 - - -	26
South Eastern Railway (Various Powers) Bill (1885), R. & M. 61 - -	43
Southend-on-Sea and District Case (1899), Rep. v. 38; Oxley, 189 -	457, 470, 481
Southend (and District), Bradwell and Colchester Case (1902), Rep.	
(1903) xi. 33 - - - - -	483
South London Tramways Bill (1882), 3 Cl. & R. 224 - - -	19, 22
South Shields, Sunderland and District Case (1901), Rep. x. 18 -	476
South Staffordshire Case (1899), Rep. v. 39; Oxley, 200 -	452, 465, 470, 485
South Staffordshire Tramway Bill (1899), 1 S. & A. 340 - - -	39
Southwark and Deptford Tramways Bill (1879), 2 Cl. & R. 225 -	27
Spen Valley Case (1899), Rep. v. 40; Oxley, 229 - - -	452
Spen Valley (Extensions) Case (1900), Rep. vii. 34 - - -	452, 470
Staines and Egham Case (1901), Rep. viii. 18 - - -	476
Stroud and Gloucestershire Case (1902), Rep. (1903) xii. 18 - -	476
Surrey and Sussex Case (1902), Rep. (1903) xii. 19 - - -	468
Sutton and Willoughby Railway Bill (1884), 3 Cl. & R. 471 - - -	43
Tanat Valley Case (1897), Rep. ii. 21, 22; Oxley, 25 - - -	470, 472
Taunton Case (1897), Rep. ii. 17; Oxley, 127 - - -	451
Tickhill Case (1900), Rep. vii. 35 - - - - -	475
Tottenham and Walthamstow Case (1902), Rep. (1903) xi. 36 - -	470
Tottenham, Walthamstow and Epping Forest Case (1901), Rep. x. 20 -	452
Tramways Orders (No. 3) (Birmingham Corporation) Bill (1872), 2 Cl.	
& St. 290 - - - - -	41
Tramways Orders (No. 2) (Bristol Tramways Extension) Bill (1891),	
R. & S. 160 - - - - -	35, 152
Tramways Orders (Bury and District) Bill (1881), 3 Cl. & R. 101 -	15, 19, 25
Tramways Orders (City of London and Metropolitan) Bill (1881), 3 Cl.	
& R. 105 - - - - -	22, 28, 40
Tramways Orders (No. 3) (London South District) Bill (1882), 3 Cl.	
& R. 242 - - - - -	22, 25

	PAGE
Tramways Orders (London Street Tramways Extensions, &c.) Bill (1871), 2 Cl. & St. 198 - - - - -	14, 18
Tramways Orders (London Street Tramways, Caledonian Road Extension) Bill (1871), 2 Cl. & St. 199 - - - - -	14
Tramways Orders (London Street) Bill (1874), 1 Cl. & R. 118 -	22, 23, 26, 28
Tramways Orders (No. 2) (North-East Metropolitan) Bill (1880), 2 Cl. & R. 316 - - - - -	28, 39
Tramways Orders (No. 2) (Pontypridd and Rhondda Valley) Bill (1882), 3 Cl. & R. 241 - - - - -	19
Tramways Orders (No. 1) (Pontypridd Urban District Council) Bill (1901), 2 S. & A. 84 - - - - -	29
Tramways Orders (No. 2), Somerton, Keinton-Mandeville and Castle Cary) Bill (1893), R. & S. 310 - - - - -	25, 31
Tramways Orders (Woolwich and Plumstead) Bill (1880), 2 Cl. & R. 321 - - - - -	20, 22, 37
Tramways Orders (No. 3) (Woolwich and South-East London) Bill (1883), 3 Cl. & R. 360 - - - - -	34, 97
Trent Valley Case (1898-9), Rep. iv. 29; v. 41; Oxley, 65 -	466, 532
Uphall and Bangour Case (1899), Rep. v. 53; Oxley, 83 - - -	454
Vale of Clyde Tramways Bill (1871), 2 Cl. & St. 137 - - -	18, 32
Vale of Rheidol Light Railway (Aberayron Extension) Case (1898), Rep. III. 28; Oxley, 42 - - - - -	469
Ventnor Case (1898), Rep. III. 24; Oxley, 37 - - - - -	451
Walthamstow and District (Urban District Council) Case (1902), Rep. (1903) XI. 38 - - - - -	470
Warrington and Northwich Case (1901), Rep. IX. 22 - - -	471
Watford and District Case (1899), Rep. VI. 36; Oxley, 241 -	467
Wellingborough and District Tramroads Bill (1903) - - -	19
Welshpool and Llanfair Case (1897), Rep. I. 17; II. 23; Oxley, 22 -	458, 460, 462, 470
West Ham Local Board Bill (1881), 3 Cl. & R. 111 - - -	44, 157
West Ham Local Board Bill (1884), 3 Cl. & R. 481 - - -	44
West Hartlepool Case (1897), Rep. I. 14; Oxley, 121 - - -	451
West Manchester Case (1897), Rep. II. 19; Oxley, 47 - - -	469
Wick and Lybster Case (1899), Rep. V. 54; Oxley, 88 - - -	503
Widnes and Runcorn Bridge Bill (1900), 2 S. & A. 33 - - -	36
Witney, Burford and Andoversford Case (1900), Rep. VII. 41 -	461
Woking Water and Gas Bill (1881), 3 Cl. & R. 114 - - -	21
Wolverhampton and Bridgnorth Case (1899), Rep. VI. 37; Oxley, 107 - - - - -	470
Worcester and District Case (1900), Rep. VI. 38; Oxley, 240 - -	493
Worcester Tramways Bill (1901), 2 S. & A. 86 - - - - -	36

TABLE OF STATUTES, MILITARY AND NAVAL TRAMWAY ORDERS AND LIGHT RAILWAY ORDERS.

[NOTE.—The page where the text of an Act or section is printed and annotated is given in black figures.

The references set against the Light Railway Orders are to the annual reports of the Board of Trade. As to these references, see further the note to the Light Railways Act, 1896, *post*, p. 449.]

	PAGE
Abandonment of Railways Act, 1850 (13 & 14 Vict. c. 83) -	496
s. 20 - - - - -	300
Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114) -	496
ss. 5, 6, 7 - - - - -	300
Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27) -	65
Aldershot and Farnborough Order, 1902, Rep. v. 1 -	484, 485, 486, 487, 509
Amesbury & Military Camp (Amendment) Order, 1901, Rep. ix. 12 -	517
Amesbury and Military Camp (Bulford Extension) Order, 1903, Rep. (1903) xii. 12 - - - - -	509
Arbitration Act, 1889 (52 & 53 Vict. c. 49) -	159, 445, 498, 519, 583, 632
Barking and Beckton Order, 1899, Rep. iv. 2 - - - - -	453
Barnsley and District Order, 1900, Rep. v. 3 - - - - -	484
Barnsley and District (Extensions) Order, 1902, Rep. vii. 2 -	517
Basingstoke and Alton (Amendment) Order, 1900, Rep. vi. 24 -	516
Bentley and Bordon Order, 1902, Rep. xi. 21 - - - - -	490, 509
Bere Alston and Calstock Order, 1900, Rep. vi. 4 - - - - -	505
Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 6 (2) - - - - -	181
Blackburn, Whalley and Padiham Order, 1901, Rep. viii. 3 -	484, 492
Blackpool and Garstang Order, 1901, Rep. vii. 3 -	482, 483, 486, 490, 493, 494
Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2 (1) (b) -	507, 511
Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), s. 1 -	lxxvi
Board of Trade Arbitrations Act, 1874 (37 & 38 Vict. c. 40) -	159, 445, 632
Part I. - - - - -	500
s. 2 - - - - -	266
s. 4 - - - - -	266, 445, 632
Part II. - - - - -	495

	PAGE
Borough Funds Act, 1872 (35 & 36 Vict. c. 91) - - -	110, 320
Borough Funds Act, 1903 (3 Edw. 7, c. 14) - - -	lxxvi
Bradford and Leeds Order, 1900, Rep. III. 3 - - -	454, 487, 492
Bridgwater, Stowey and Stogursey Order, 1901, Rep. VII. 6 -	494, 509, 510
Bridlington and North Frodingham Order, 1898, Rep. II. 1 -	456
Bridlington and North Frodingham (Extension of Time) Order, 1901, Rep. IX. 3 - - - - -	516
Bristol Encroachment Act, 1847 (1 & 2 Vict. c. lxxxv.), ss. 31, 32 -	205
Bromsgrove Order, 1900, Rep. VI. 10 - - - - -	487, 491
Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 4 - - - - -	lxxvi, 263
ss. 23 (1), 129 - - - - -	273
s. 149 - - - - -	152
ss. 270—273 - - - - -	205
s. 340 - - - - -	273
ss. 380, 385 - - - - -	263
Sched. V. - - - - -	205
Burgh Police (Scotland) Act, 1903 (3 Edw. 7, c. 33), s. 50 -	lxxvi
Bury and Diss Order, 1901, Rep. VII. 29; VIII. 13 - -	482, 485, 488
Caledonian Railway (Leadhills and Wanlockhead) Order, 1899, Rep. I. 26 - - - - -	483
Callington Order, 1900, Rep. V. 4 - - - - -	486
Carmyllie Order, 1899, Rep. I. 20 - - - - -	505
Chatham Military Tramways Order, 1901, Stat. R. and O. 1902, No. 469 - - - - -	288
Chatham and District Order, 1899, Rep. III. 22; IV. 26 - -	485, 490
Cheap Trains and Canal Carriers Act, 1858 (21 & 22 Vict. c. 75), s. 3 -	496
Cheap Trains Act, 1883 (46 & 47 Vict. c. 34) - - -	440, 441, 496, 498
s. 3 - - - - -	524
Cheltenham and District Order, 1900, Rep. V. 7 - - -	491
Chittenden Naval Tramway Order, 1901, London Gazette, Apr. 12, 1901 (p. 2534); O. in. C. July 24, 1901 - - -	296
Circuit Courts (Scotland) Act, 1828 (9 Geo. 4, c. 29), s. 13 - -	267
City of London Sewers Act, 1848 (11 & 12 Vict. c. clxxiii.), s. 168 -	271
City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.), s. 5 -	271
Cleobury Mortimer and Ditton Priors Order, 1901, Rep. VIII. 4 -	494
Coggeshall Order, 1900, Rep. IV. 13 - - - - -	472, 535
Colne and Trawden Order, 1901, Rep. V. 31 - 453, 456, 485, 490, 493	
Colne and Trawden (Capital and Further Powers Amendment) Order, 1902, Rep. XII. 3 - - - - -	517
Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16) - - -	122
ss. 75—88 - - - - -	123
Companies Act, 1862 (25 & 26 Vict. c. 89) - - - 325, 330, 398, 400	
s. 85 - - - - -	257
s. 87 - - - - -	173
s. 199 - - - - -	173, 496
Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16) -	203, 523, 552, 578, 587, 621
s. 2 - - - - -	178
s. 40 - - - - -	577
s. 65 - - - - -	129
s. 124 - - - - -	203

	PAGE
Companies Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 17) - - - - -	520, 522, 552
Companies Clauses Act, 1863 (26 & 27 Vict. c. 118) - - - - -	520, 522, 523
Part I. - - - - -	550, 587
ss. 14, 15 - - - - -	- 576
Part III. - - - - -	489, 577, 588
Companies Clauses Act, 1869 (32 & 33 Vict. c. 48) - - - - -	521, 522, 523
Companies Clauses Consolidation Act, 1888 (51 & 52 Vict. c. 48) - - - - -	523
Companies Clauses Consolidation Act, 1889 (52 & 53 Vict. c. 37) - - - - -	523
Conciliation Act, 1896 (59 & 60 Vict. c. 30), s. 2 - - - - -	159
Continuous Brakes Act, 1878 (41 & 42 Vict. c. 20) - - - - -	84
Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38)- - - - -	84, 106, 304
s. 1 - - - - -	304, 497
s. 2 - - - - -	304
ss. 3, 4 - - - - -	307
s. 5 - - - - -	308
s. 6 - - - - -	309
Corringham Order, 1899, Rep. v. 10 - - - - -	481
Cotton Statistics Act, 1868 (31 & 32 Vict. c. 33) - - - - -	496
County Councils (Bills in Parliament) Act, 1903 (3 Edw. 7, c. 9) - - - - -	lxxvi
County of Middlesex Order, 1901, Rep. vi. 1; vii. 14 - - - - -	453, 489, 494
Cranbrook and Tenterden Order, 1900, Rep. v. 11 - - - - -	480, 505
Cromarty and Dingwall Order, 1902, Rep. i. 21 - - - - -	461, 483, 488, 489, 509, 510
Crowland and District Order, 1898, Rep. ii. 10 - - - - -	472, 481, 483, 484
Crowland and District (Amendment) Order, 1902, Rep. x. 7 - - - - -	516
Crown Lands Act, 1851 (14 & 15 Vict. c. 42), s. 2 - - - - -	496
Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3) - - - - -	161
Darlington Order, 1902, Rep. vi. 12 - - - - -	454
Dartford Order, 1902, Rep. ix. 6 - - - - -	454
Dean Forest (Walmore and The Bearce) Commons Act, 1866 (29 & 30 Vict. c. 70) - - - - -	512
Defence Act, 1842 (5 & 6 Vict. c. 94) - - - - -	226
Derby and Ashbourne Order, 1901, Rep. ii. 4; iv. 7- - - - -	482, 485, 486, 487
Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), ss. 21—23 - - - - -	496
Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37) - - - - -	444
Documentary Evidence Act, 1882 (45 & 46 Vict. c. 9) - - - - -	444
Doncaster Corporation Order, 1900, Rep. v. 15 - - - - -	457, 484, 514
Dornoch Order, 1899, Rep. i. 28 - - - - -	456, 503
Dundee Street Tramways, Turnpike Roads and Police Act, 1878 (41 & 42 Vict. c. xciv.), s. 22 - - - - -	143
Durham and District Order, 1901, Rep. viii. 6 - - - - -	487
East and West Yorkshire Union Order, 1901, Rep. vii. 16 - - - - -	484, 486, 489, 490, 505
East Sussex Order, 1901, Rep. vii. 17 - - - - -	483

	PAGE
Electric Lighting Act, 1882 (45 & 46 Vict. c. 56) - -	226, 426, 573
s. 12 - - - - -	136
s. 13 - - - - -	157
s. 15 - - - - -	151, 152, 426, 607
s. 27 - - - - -	188
s. 28 - - - - -	159
s. 32 - - - - -	438, 573
s. 33 - - - - -	261
Electric Lighting Act, 1888 (51 & 52 Vict. c. 12) - -	226, 426
s. 2 - - - - -	188
Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19),	
Sched., ss. 11 <i>sqq.</i> - - - - -	136, 137
s. 15 - - - - -	157
ss. 17, 18 - - - - -	152
s. 21 (3) - - - - -	157
s. 30 - - - - -	152
ss. 63—68 - - - - -	172
Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90) -	85, 88, 252, 254
s. 10 - - - - -	252
Employers' Liability Act, 1880 (43 & 44 Vict. c. 42) -	85, 88, 252,
s. 1 - - - - -	255, 497
ss. 2, 8 - - - - -	181, 252
- - - - -	252
Entail Amendment (Scotland) Act, 1868 (31 & 32 Vict. c. 84) -	507
Entail Amendment (Scotland) Act, 1875 (38 & 39 Vict. c. 61),	
s. 3 - - - - -	86
s. 14 - - - - -	87, 507
Entail Amendment (Scotland) Act, 1878 (41 & 42 Vict. c. 28) -	87
Entail Scotland Act, 1882 (45 & 46 Vict. c. 53) - -	87, 507
Essington and Ashmore Order, 1900, Rep. v. 18 - -	488
Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 14 - -	203
s. 16 - - - - -	267
Excise Act, 1848 (11 & 12 Vict. c. 118), s. 2 - -	498
Expiring Laws Continuance Act, 1903 (3 Edw. 7, c. 40) -	453
Explosives Act, 1875 (38 & 39 Vict. c. 17), ss. 35—40 -	220, 496
Factory and Workshop Act, 1901 (1 Ed. 7, c. 22), s. 106 -	497
Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12 - -	187
Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6 (1) - -	87
Flamborough and Bridlington (Amendment) Order, 1899, Rep. iv. 9	516
Forsinard, Melvich and Port Skerra Order, 1898, Rep. i. 22 -	456, 503
Fraserburgh and St. Combs Order, 1899, Rep. ii. 25 - -	461, 483
Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70), s. 3 -	179
Gas and Water Works Facilities Act, 1870, Amendment Act, 1873	
(36 & 37 Vict. c. 89), s. 13 - - - - -	266
Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15),	
s. 2 - - - - -	179
ss. 6 to 12 - - - - -	136, 152
s. 8 - - - - -	157

	PAGE
Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15),	
s. 9 - - - - -	169
ss. 10, 11 - - - - -	142
s. 29 - - - - -	226
Gifford and Garvald Order, 1898, Rep. II. 26 - - - - -	505
Glasgow and South Western Railway (Cairn Valley) Order, 1900,	
Rep. v. 48 - - - - -	505
Glasgow and South Western Railway (Maidens and Dunure) Order,	
1899, Rep. IV. 33 - - - - -	493
Glasgow Police Act, 1866 (29 & 30 Vict. c. cclxxiii.), s. 218 - - -	160
Goole and Marshland Order, 1899, Rep. II. 6 - - - - -	493
Gower Order, 1899, Rep. I. 16 - - - - -	488, 490
Gower (Amendment) Order, 1902, Rep. X. 25 - - - - -	516, 517
Great Western Railway (Pewsey and Salisbury) Order, 1898, Rep. II.	
14 - - - - -	509
Grimsby and Saltfleetby (Amendment) Order, 1902, Rep. XI. 18 - -	517
Hadlow (Amendment) Order, 1901, Rep. IX. 8 - - - - -	517
Halesowen Order, 1901, Rep. IX. 9 - - - - -	453, 484
Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27) -	493
Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), ss. 6, 8, 9 - -	496
Highway Act, 1835 (5 & 6 Will. 4, c. 50) - - - - -	524
s. 72 - - - - -	137
s. 78 - - - - -	196, 197
s. 82 - - - - -	261
Highways, &c. (Scotland) Act, 1845 (8 & 9 Vict. c. 41) - - -	284, 285
Highway Act, 1862 (25 & 26 Vict. c. 61), ss. 5—8, 39 - - -	96
Highway Act, 1864 (27 & 28 Vict. c. 101), ss. 4—17 - - -	96
Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict.	
c. 77),	
ss. 3, 4, 5 - - - - -	96
s. 27 - - - - -	261
s. 38 - - - - -	197
Highway (Railway Crossings) Act, 1839 (2 & 3 Vict. c. 45) - -	496
Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70),	
s. 68 - - - - -	112
s. 83 - - - - -	459
s. 85 - - - - -	266
Improvement of Land Act, 1864 (27 & 28 Vict. c. 114) 2, 86, 87, 506, 507	
s. 8 - - - - -	507
s. 9 - - - - -	86, 87
ss. 24, 49—52, 78—89 - - - - -	508
Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), s. 2,	
Sched. I. - - - - -	87
Inclosure Acts, 1845 to 1882 - - - - -	510
Inclosure Act, 1845 (8 & 9 Vict. c. 118) - - - - -	512
ss. 11, 13, 14 - - - - -	511
ss. 12, 15 - - - - -	511, 512

	PAGE
Inclosure Act, 1854 (17 & 18 Vict. c. 97), ss. 15—20	- - - 511
Income Tax Act, 1860 (23 & 24 Vict. c. 14), ss. 5, 6 -	- - - 497
Interpretation Act, 1889 (52 & 53 Vict. c. 63) -	93, 383, 550, 587
s. 7 - - - - -	- - 276, 286
s. 12 - - - - -	- - 98, 509
s. 13 (8) - - - - -	- - 444
s. 23 - - - - -	95, 522, 523
s. 31 - - - - -	- 203, 268
Isle of Axholme Order, 1899, Rep. III. 13	- - - 483
Isle of Thanet Order, 1899, Rep. I. 10	- - - 492
Isle of Thanet (Extensions) Order, 1900, Rep. v. 25	- - - 486
Isle of Thanet (Amendment) Order, 1901, Rep. IX. 11	- - - 516
Jarrow and South Shields Order, 1901, Rep. VIII. 9 -	- - - 494
Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16	- - - 335
Kelvedon, Tiptree and Tollesbury Order, 1901, Rep. II. 7-	461, 480, 486, 488
Kidderminster and Bewdley Order, 1901, Rep. VIII. 10	- 482, 487, 491
Kinver Order, 1899, Rep. III. 14	- - - 484
Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18) -	93, 94, 514, 523, 551
s. 2 - - - - -	- - 178
s. 3 - - - - -	- - 466
ss. 7, 9 - - - - -	- - 506
s. 16 - - - - -	- - 481
ss. 16—68 - - - - -	- - 111
ss. 22, 23, 58, 59, 64, 68, 85, 105, 106, 115, 124, 130, 136 - - - - -	- - 498
s. 71 - - - - -	- - 500, 554
ss. 84—91 - - - - -	- - 112
s. 92 - - - - -	112, 113, 416, 481
ss. 93, 128 - - - - -	- - 102
ss. 99—107 - - - - -	- - 511
s. 121 - - - - -	- 169, 498
s. 133 - - - - -	- - 76
Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19) -	93, 94, 514, 521
s. 7 - - - - -	- - 506
ss. 9, 21, 56, 84, 97, 108, 114, 118, 123, 130 -	- - 499
ss. 17—66 - - - - -	- - 111
ss. 23, 36, 63 - - - - -	- - 498
s. 69 - - - - -	- - 500
ss. 83—89 - - - - -	- - 112
s. 90 - - - - -	- - 416
ss. 93—98 - - - - -	- - 511
s. 127 - - - - -	- - 76

	PAGE
Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106) - - - - -	93, 94, 521, 523
Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18) -	95, 523
Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15) -	95, 111, 523
Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11)	95, 111, 523
Lands Valuation (Scotland) Act, 1854 (17 & 18 Vict. c. 91) -	497, 522
s. 6 - - - - -	- 119
Lands Valuation (Scotland) Act, 1857 (20 & 21 Vict. c. 58) -	- 522
Lands Valuation (Scotland) Amendment Act, 1895 (58 & 59 Vict. c. 41)	522
Lands Valuation (Scotland) Amendment Act, 1902 (2 Edw. 7, c. 25)	497, 522
Lastingham and Rosedale Order, 1900, Rep. vi. 21 - - -	- 513
Lauder Order, 1898, Rep. i. 25 - - - - -	- 456, 489
Law Agents (Scotland) Act, 1873 (36 & 37 Vict. c. 63) -	- 323
Leek, Caldou Low and Hartington Order, 1899, Rep. ii. 9 -	456, 461, 503, 504
Light Railways Act, 1896 (59 & 60 Vict. c. 48) - 1, 5—8, 11, 12,	255, 449
s. 1 - - - - -	- 449 , 526
s. 2 - - - - -	- 115, 453
s. 3 - - - - -	6, 454 , 524
s. 4 - - - - -	- 457
s. 5 - - - - -	49, 50, 459 , 549
s. 6 - - - - -	- 462
s. 7 - 6, 45, 463 , 527, 528, 529, 532, 535, 543, 544, 545	
s. 8 - - - - -	- 45, 472
s. 9 - - - - -	6, 11, 12, 45, 468, 473
s. 10 - - - - -	- 110, 477
s. 11 - - - - -	6, 7, 87, 106, 123, 299, 478 , 524
s. 12 - - - - -	- 88, 89, 253, 309, 494 , 524
s. 13 - - - - -	- 7, 89, 498 , 511, 538, 539
s. 14 - - - - -	- - 7, 500
s. 15 - - - - -	- 499, 500
s. 16 - - - - -	- 123, 124, 501
s. 17 - - - - -	115, 504 , 525, 532
s. 18 - - - - -	- 132, 504
s. 19 - - - - -	- 505 , 547
s. 20 - - - - -	- 508
s. 21 - - - - -	- 510 , 529, 547
s. 22 - - - - -	- 45, 512
s. 23 - - - - -	- 513 , 532
s. 24 - - - - -	114, 514 , 532, 536
s. 25 - - - - -	- 88, 517
s. 26 - - - - -	63, 87, 518
s. 27 - - - - -	- 522
s. 28 - - - - -	- 87, 522
s. 29 - - - - -	- 523
Sched. I. - - - - -	- 178, 455, 524
Sched. II. - - - - -	88, 478, 481, 494, 495, 524
Sched. III. - - - - -	- 504, 525

	PAGE
Light Railways Commissioners (Salaries) Act, 1901	
(1 Edw. 7, c. 36) - - - - -	453, 526
ss. 1, 2 - - - - -	526
Light Railways (Ireland) Act, 1889 (52 & 53 Vict. c. 66)	92
Light Railways (Ireland) Act, 1893 (56 & 57 Vict. c. 50)	92
Liverpool and Prescot Order, 1899, Rep. iv. 14 - - -	485
Liverpool Tramways Act, 1880 (43 & 44 Vict. c. cxxvi.) - - -	120
Lizard (Amendment) Order, 1902, Rep. x. 9 - - -	516
Llandudno and Colwyn Bay Order, 1899, Rep. ii. 20 - - -	486, 492, 493
Local Government Act, 1858 (21 & 22 Vict. c. 98) - - -	269
Local Government Act, 1888 (51 & 52 Vict. c. 41) - - -	502, 504, 521, 579
s. 3 (1) - - - - -	271
ss. 6, 34 (2), 64 - - - - -	140
s. 11 - - - - -	94
s. 15 - - - - -	110
s. 40 - - - - -	124, 270, 271, 272
s. 57 - - - - -	272
s. 68 - - - - -	271, 503
s. 81 - - - - -	504
s. 83 - - - - -	100, 277
s. 87 - - - - -	266
Local Government Act, 1894 (56 & 57 Vict. c. 73) - - -	504, 521, 630
ss. 1 (2), 6 (1), 19 - - - - -	272
s. 9 - - - - -	266
s. 17 - - - - -	100, 277
s. 21 - - - - -	94, 272
s. 25 - - - - -	94, 96
s. 57 - - - - -	504
s. 58 - - - - -	444
Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), ss. 92, 93, 105, Sched. V. - - - - -	92
Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50) - - -	503, 504, 518, 521, 579
s. 11 - - - - -	189, 273
s. 16 - - - - -	281
s. 26 (3), (4) - - - - -	503
s. 27 - - - - -	273
s. 56 - - - - -	110, 320
s. 76 - - - - -	504
ss. 77 (1), 77—82 - - - - -	521
Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58) - - -	504, 521
s. 34 - - - - -	504
Local Loans Act, 1875 (38 & 39 Vict. c. 83) - - -	628
s. 15 - - - - -	124, 628
s. 31 - - - - -	124
Locomotives Act, 1861 (24 & 25 Vict. c. 70), s. 12 - - -	197
Locomotives Act, 1865 (28 & 29 Vict. c. 83) - - -	226
Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1 - - -	197
London Cab Act, 1896 (59 & 60 Vict. c. 27) - - -	205, 206

	PAGE
London County Council (Money) Acts, 1875 to 1903 - - -	124
London County Council (Vauxhall Bridge Tramways) Act, 1896 (59 & 60 Vict. c. cexi.), s. 20 - - - - -	124
London County Tramways Act, 1900 (63 & 64 Vict. c. cclxx.), s. 46 -	124
London County Tramways (Electrical Powers) Act, 1900 (63 & 64 Vict. c. cexxxviii.), s. 27 - - - - -	124, 125
London County Council (Tramways and Improvements) Act, 1901 (1 Edw. 7, c. cclxxi.),	
s. 67 - - - - -	125
s. 70 - - - - -	123
London Hackney Carriage Act, 1831 (1 & 2 Will. 4, c. 22) - -	205
London Hackney Carriages Act, 1833 (3 & 4 Will. 4, c. 48) - -	161
London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86) - -	205
s. 7 - - - - -	195, 206
s. 22 - - - - -	161
London Hackney Carriages Act, 1850 (13 & 14 Vict. c. 7) - -	205
London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33) - -	205
London Hackney Carriage (No. 2) Act, 1853 (16 & 17 Vict. c. 127) -	205
London Government Act, 1899 (62 & 63 Vict. c. 14),	
s. 4 - - - - -	273
s. 6 - - - - -	110, 273
s. 10 - - - - -	503
London & North Western Railway (Rates and Charges) Order Confir- mation Act, 1891 (54 & 55 Vict. c. cexxi.), ss. 6, 7, 8 - -	159
London Overhead Wires Act, 1891 (54 & 55 Vict. c. clxxvii.) - -	229
London United Tramways Order, 1899, Rep. iv. 7 - - -	485, 486, 487
London United Tramways Act, 1900 (63 & 64 Vict. c. cclxxi.), s. 35 (37) - - - - -	198
Loughborough and District Order, 1901, Rep. vii. 26 - - -	486, 487
Lunacy Act, 1890 (53 & 54 Vict. c. 120), s. 120 - - -	507
Lydd Military Tramways Order, 1890, London Gazette, May 27, 1890 (p. 3028); O. in C., Nov. 24, 1891 - - -	287, 291
Malicious Damage Act, 1861 (24 & 25 Vict. c. 97),	
ss. 4, 33 - - - - -	497
ss. 35--38 - - - - -	211, 497
Mansfield and District Order, 1901, Rep. vii. 28 - - -	485, 486, 492
Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 446—450 -	220
Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), s. 6 - - -	457
Metropolis Management Act, 1855 (18 & 19 Vict. c. 120) - -	270
ss. 68, 135 - - - - -	154
s. 98 - - - - -	152
s. 105 - - - - -	104
ss. 109—115 - - - - -	137
s. 111 - - - - -	142
Scheds. A. and B. - - - - -	270
Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), ss. 34, 35 - - - - -	496
Metropolis Water Act, 1902 (2 Edw. 7, c. 41), ss. 2, 3, 37 - -	151

	PAGE
Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102)	124
s. 3 - - - - -	272
s. 38 - - - - -	124
Metropolitan Board of Works (Loans) Act, 1870 (33 & 34 Vict. c. 24)	124
Metropolitan Board of Works (Loans) Act, 1871 (34 & 35 Vict. c. 47)	124
Metropolitan Commons Acts, 1866 to 1878 - - - - -	510
Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122)	512
ss. 2, 3, 5 - - - - -	512
Sched. I. - - - - -	272
Metropolitan Commons Amendment Act, 1869 (32 & 33 Vict. c. 107),	
s. 2 - - - - -	512
Metropolitan Commons Act, 1898 (61 & 62 Vict. c. 43)	512
Metropolitan Police Act, 1829 (10 Geo. 4, c. 44), ss. 4, 34, Sched.	512
Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47),	
s. 2 - - - - -	512
ss. 51—54 - - - - -	263
Metropolitan Police Act, 1856 (19 & 20 Vict. c. 2), s. 1	263
Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71),	
s. 14 - - - - -	95
s. 47 - - - - -	257
Metropolitan Police Courts Act, 1897 (60 & 61 Vict. c. 26), s. 9	257
Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115)	205, 206
s. 4 - - - - -	161, 206
s. 9 - - - - -	207
Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134)	205
s. 8 - - - - -	161
ss. 11—16, 24 - - - - -	263
Middleton Order, 1899, Rep. III. 17	484, 490, 492, 493
Middleton (Deviation, &c.) Order, 1902, Rep. x. 11	516
Mid-Suffolk Order, 1900, Rep. VI. 26	481, 499, 513
Mid-Suffolk (Amendment) Order, 1901, Rep. IX. 15	517
Military Tramways Act, 1887 (50 & 51 Vict. c. 65)	8, 55, 287, 296
ss. 1—3 - - - - -	287
s. 4 - - - - -	151, 288
s. 5 - - - - -	289
ss. 6, 7 - - - - -	290
ss. 8—10 - - - - -	291
s. 11 - - - - -	55, 110, 167, 293
s. 12 - - - - -	110, 294
Mitcham Order, 1901, Rep. IX. 16	453, 487, 492, 493
Morley and District Order, 1901, Rep. VII. 30	493
Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76)	269
Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50)	272
ss. 25—28 - - - - -	630
ss. 139, 140, 144 - - - - -	503
s. 242 (1), Sched. IX. - - - - -	272
Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict.	
c. 91) - - - - -	110, 320
s. 10 - - - - -	110

	PAGE
National Defence Act, 1888 (51 & 52 Vict. c. 31), s. 4 - -	85, 497
Naval Enlistment Act, 1853 (16 & 17 Vict. c. 69), s. 18 - -	- 496
Naval Works Act, 1899 (62 & 63 Vict. c. 42) - - -	8, 55, 296
s. 2 - - - - -	8, 55, 296
s. 3 - - - - -	- 296
Nelson Order, 1901, Rep. v. 30; vi. 27 - - -	- 453, 456
Nidd Valley Order, 1901, Rep. viii. 14 - - -	482, 483, 486, 494
North Holderness Order, 1899, Rep. ii. 12 - - -	- - 493
North Sunderland Order, 1898, Rep. iii. 20 - - -	- - 505
North Wales Narrow Gauge Railways (Beddgelert Light Railway Extension) Order, 1900, Rep. v. 43 - - -	482, 483, 485
Notice of Accidents Act, 1894 (57 & 58 Vict. c. 28), ss. 1—3, Sched. -	86
Nuneaton and District Order, 1901, Rep. vi. 28 - -	482, 484, 488, 490, 492, 494
Oakington and Cottenham Order, 1901, Rep. vi. 29 - - -	- 481
Oaths Act, 1888 (51 & 52 Vict. c. 46) - - - -	- 267, 481
Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 32—34 - - - - -	- 212, 497
s. 42 - - - - -	- 197
Ormskirk and Southport Order, 1901, Rep. vi. 30 - - -	- 492
Padstow, Bedruthan and Mawgan Order, 1903, Rep. (1903) xii. 16 -	488
Parliamentary Costs Act, 1865 (28 & 29 Vict. c. 27) - - -	- 318
s. 9 - - - - -	- 131
Parliamentary Costs Act, 1871 (34 & 35 Vict. c. 3) - - -	- 110
Parliamentary Deposits Act, 1846 (9 & 10 Vict. c. 20), s. 5 -	300, 407, 410, 422
Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27) -	109, 131, 297 , 410
s. 1 - - - - -	- 297 , 336
ss. 2, 3 - - - - -	- 302
ss. 4, 5 - - - - -	- 303
Parliamentary Documents Deposit Act, 1837 (7 Will. 4 & 1 Vict. c. 83) - - - - -	- 100, 422
Parliamentary Witnesses Oaths Act, 1871 (34 & 35 Vict. c. 83)-	- 110
Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1 -	58, 68
Penzance, Newlyn and West Cornwall Order, 1899, Rep. v. 36-	483, 493
Pewsey and Salisbury (Extension of Time) Order, 1901, Rep. ix. 17-	516
Police (Scotland) Act, 1857 (20 & 21 Vict. c. 72), s. 28 - -	- 273
Poole and District Order, 1899, Rep. iv. 24 - - -	- 490
Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), s. 1 - -	- 51
Poor Rate (Exemption) Act, 1840 (3 & 4 Vict. c. 89) - - -	- 57
Portsdown and Horndean Order, 1899, Rep. iv. 10 - -	484, 485, 490
Post Office (Parcels) Act, 1882 (45 & 46 Vict. c. 74) - -	106, 304, 307, 308, 309, 497
s. 8 - - - - -	- 304
Potteries Order, 1898, Rep. i. 13 - - - - -	- 484
Potteries (Extensions) Order, 1902, Rep. ix. 18 - - -	- 515
Preliminary Inquiries Act, 1851 (14 & 15 Vict. c. 49), s. 7 -	- 131

	PAGE
Prisons (Scotland) Act, 1877 (40 & 41 Vict. c. 53) - - -	273
Private Legislation Procedure (Scotland) Act, 1899 (62 & 63 Vict.	
c. 47) - - - - 8, 9, 17, 47, 310, 414, 417, 418, 424	
s. 1 - - - - -	310
s. 2 - - - - -	311, 414
s. 3 - - - - -	312
ss. 4, 5 - - - - -	313
s. 6 - - - - -	47, 48, 315, 420, 421
s. 7 - - - - -	316
s. 8 - - - - -	317
s. 9 - - - - -	47, 318
ss. 10, 11 - - - - -	319
ss. 12, 13 - - - - -	320
s. 14 - - - - -	321
s. 15 - - - - -	321, 417
s. 16 - - - - -	48, 322
s. 17 - - - - -	97, 98, 322
s. 18 - - - - -	47, 323, 513
s. 19 - - - - -	323
Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61) - -	244
Public Health Act, 1848 (11 & 12 Vict. c. 63) - - -	269
Public Health Act, 1875 (38 & 39 Vict. c. 55) - 44, 205, 413, 579, 625	
s. 4 - - - - -	25, 93
s. 51 - - - - -	457
s. 63 - - - - -	193
s. 144 - - - - -	94
s. 147 - - - - -	147, 253
s. 148 - - - - -	144, 148
s. 149 - - - - -	137, 144, 261
s. 150 - - - - -	25, 104
s. 153 - - - - -	152
ss. 156, 157 - - - - -	25
s. 162 - - - - -	193
s. 171 - - - - -	204, 263
s. 174 - - - - -	148
s. 204 - - - - -	263
s. 207 - - - - -	503
s. 211 (1b) - - - - -	75, 497
s. 227 - - - - -	123
s. 229 - - - - -	503
s. 230 - - - - -	75
ss. 233—244 - - - - -	124
s. 234 - - - - -	123, 627, 628
ss. 236—239 - - - - -	628
ss. 246, 247, 250, 265 - - - - -	444
s. 267 - - - - -	445
ss. 280—284 - - - - -	115
s. 293 - - - - -	266
s. 299 - - - - -	258
s. 313 - - - - -	272
ss. 340, 341 - - - - -	205

	PAGE
Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37), s. 3 - - - - -	261
Public Health (Confirmation of By-laws) Act, 1884 (47 & 48 Vict. c. 12), ss. 2, 3 - - - - -	208
Public Health (Building in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3	25
Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 15(2)	261
Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38) - - -	392, 555
Quakers and Moravians Act, 1833 (3 & 4 Will. 4, c. 49), s. 1 - -	267
Quakers and Moravians Act, 1838 (1 & 2 Vict. c. 77) - - -	267
Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31) - -	411, 495
s. 3 - - - - -	335, 406, 566
Railway and Canal Traffic Act, 1873 (36 & 37 Vict. c. 48). <i>See</i> Regu- lation of Railways Act, 1873.	
Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25) - -	307, 308, 411, 495
s. 8 - - - - -	335, 569
s. 24 - - - - -	110
s. 32 - - - - -	84
s. 48 - - - - -	497
Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 & 55 Vict. c. 12) - - - - -	110, 495
Railway and Canal Traffic Act, 1892 (55 & 56 Vict. c. 44) - -	495
Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54) - -	495
Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20) -	87, 170, 523, 551, 555, 557, 560, 645
s. 3 - - - - -	193
s. 6 - - - - -	480
s. 7 - - - - -	530, 551, 588
ss. 8—10 - - - - -	551
ss. 11, 15 - - - - -	102, 550
ss. 12—14, 25—29, 46—48, 59, 60, 63, 64 - - - - -	550
s. 16 - - - - -	151
ss. 18—23 - - - - -	152, 480, 551
ss. 24, 89, 90, 110, 111, 144, 163 - - - - -	588
s. 32 - - - - -	113
s. 69 - - - - -	169
s. 76 - - - - -	120
ss. 77—85 - - - - -	261
s. 86 - - - - -	193
s. 87 - - - - -	513
s. 92 - - - - -	120
s. 103 - - - - -	212, 214, 588
s. 104 - - - - -	216, 588
s. 105 - - - - -	220, 588
s. 108 - - - - -	198, 202, 203, 214, 588
s. 109 - - - - -	198, 202, 214, 588
ss. 112, 113 - - - - -	480, 588, 627
ss. 145—161 - - - - -	258
s. 154 - - - - -	216
s. 162 - - - - -	551, 588

Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33)	-	-	-	-	-	-	-	-	256, 258, 520, 522
s. 7	-	-	-	-	-	-	-	-	530
ss. 137—139, 142, 144, 146, 147, 149, 150	-	-	-	-	-	-	-	-	258
Railways Clauses Act, 1863 (26 & 27 Vict. c. 92)	-	-	-	-	-	-	-	-	87, 521, 522, 523
s. 7	-	-	-	-	-	-	-	-	480, 550, 551
s. 8	-	-	-	-	-	-	-	-	550, 551
ss. 9—12	-	-	-	-	-	-	-	-	513, 550, 551, 561, 562
Part II.	-	-	-	-	-	-	-	-	643
Part III.	-	-	-	-	-	-	-	-	411, 550, 551, 569
Railway Clearing Act, 1850 (13 & 14 Vict. c. xxxiii.), s. 28	-	-	-	-	-	-	-	-	496
Railway Companies Act, 1867 (30 & 31 Vict. c. 127)	-	-	-	-	-	-	-	-	497
Railway Companies Arbitration Act, 1859 (22 & 23 Vict. c. 59)-	-	-	-	-	-	-	-	-	497
ss. 18—29	-	-	-	-	-	-	-	-	438
Railway Companies' Powers Act, 1864 (27 & 28 Vict. c. 120)	-	-	-	-	-	-	-	-	496, 517
Railway Companies (Scotland) Act, 1867 (30 & 31 Vict. c. 126)	-	-	-	-	-	-	-	-	497
Railway Companies Securities Act, 1866 (29 & 30 Vict. c. 108)	2,	84,	497	-	-	-	-	-	
s. 2	-	-	-	-	-	-	-	-	84
Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121)	308,	496	-	-	-	-	-	-	
s. 30	-	-	-	-	-	-	-	-	128
Railways (Conveyance of Mails) Act, 1828 (1 & 2 Vict. c. 98)	-	-	-	-	-	-	-	-	307, 496
Railways (Electrical Power) Act, 1903 (3 Edw. 7, c. 30)	-	-	-	-	-	-	-	-	lxxvi, 496
Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27)	-	-	-	-	-	-	-	-	497
s. 15 (4)	-	-	-	-	-	-	-	-	501
Railways (Ireland) Act, 1890 (53 & 54 Vict. c. 52)	-	-	-	-	-	-	-	-	92, 308
Railways (Ireland) Act, 1896 (59 & 60 Vict. c. 34)	-	-	-	-	-	-	-	-	92
Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79)	-	88,	494,	495,	498	-	-	-	
s. 13	-	-	-	-	-	-	-	-	160, 206
s. 15	-	-	-	-	-	-	-	-	206
Railway Passenger Duty Act, 1847 (10 & 11 Vict. c. 42)	-	-	-	-	-	-	-	-	498
Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870 (33 & 34 Vict. c. 19)	-	-	-	-	-	-	-	-	496
Railway Regulation Act, 1840 (3 & 4 Vict. c. 97)	-	-	-	-	-	-	-	-	495
ss. 3, 4	-	-	-	-	-	-	-	-	495, 588
Railway Regulation Act, 1842 (5 & 6 Vict. c. 55)	-	-	-	-	-	-	-	-	495
ss. 4—6, 9, 10	-	-	-	-	-	-	-	-	524
Railway Regulation Act, 1844 (7 & 8 Vict. c. 85)	-	-	-	-	-	-	-	-	495, 498
ss. 6—9, 11, 12	-	-	-	-	-	-	-	-	496
Railway Regulation (Gauge) Act, 1846 (9 & 10 Vict. c. 57)	-	132,	496	-	-	-	-	-	
s. 1	-	-	-	-	-	-	-	-	524
Railway Regulation Act, 1851 (14 & 15 Vict. c. 64)-	-	-	-	-	-	-	-	-	496
Railway Regulation Act (Returns of Signal Arrangements, Working, &c.), 1873 (36 & 37 Vict. c. 76)	-	-	-	-	-	-	-	-	495
ss. 4, 6	-	-	-	-	-	-	-	-	524
Railway Regulation Act, 1893 (56 & 57 Vict. c. 29)-	-	-	-	-	-	-	-	-	496
Railway Returns (Continuous Breaks) Act, 1878 (41 & 42 Vict. c. 20)	-	496,	524	-	-	-	-	-	
Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict. c. 50)	-	-	-	-	-	-	-	-	496
Railway (Sales and Leases) Act, 1850 (13 & 14 Vict. c. 96)	-	-	-	-	-	-	-	-	496
Redditch and District Order, 1900, Rep. iv.	25	-	-	-	-	-	-	-	484, 486
Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16	-	85,	181,	-	-	-	-	-	
		255,	309,	497	-	-	-	-	

	PAGE
Regulation of Railways Act, 1844 (7 & 8 Vict. c. 85), s. 11	- - 307
Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119)	- - 2, 495
s. 1	- - - - - 245
s. 2	- - - - - 83, 253
ss. 3—13	- - - - - 83, 495, 588
ss. 17, 18, 21, 24	- - - - - 83
s. 19	- - - - - 83, 481, 524, 551
ss. 20, 22	- - - - - 524
s. 25	- - - - - 83, 159, 245
s. 26	- - - - - 83, 245, 251
s. 27—29	- - - - - 5, 89, 505, 524
ss. 30, 31	- - - - - 83, 438
s. 32	- - - - - 438
s. 34	- - - - - 84, 495, 588
ss. 36, 37	- - - - - 307
ss. 39, 40	- - - - - 84
Sched. I.	- - - - - 83
Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78)	- - - 495
ss. 1—4, 6—8, 11, 15	- - - 84
s. 5	- - - 524
ss. 9, 10	- - - 84, 495, 588
s. 17	- - - 495
Sched. I.	- - - 84
Sched. II.	- - - 84, 495
Regulation of Railways Act (Railway and Canal Traffic Act), 1873 (36 & 37 Vict. c. 48)	- - - 254, 255, 308, 411, 495, 569
ss. 3, 18—20	- - - 307
s. 6	- - - 335
s. 8	- - - 487
Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57)	- - 496, 524, 551
ss. 1 (a), 1 (b), 4	- - - 481, 551
s. 1 (c)	- - - 481
s. 5	- - - 212, 214, 481, 588
s. 6	- - - 481, 588
Revenue Act, 1863 (26 & 27 Vict. c. 33), ss. 13, 14	- - - 498
Revenue Act, 1866 (29 & 30 Vict. c. 36), s. 8	- - - 497
Revenue Act, 1869 (32 & 33 Vict. c. 14)	- - - 161
Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 12	- - - 87
Rhyl and Prestatyn Order, 1900, Rep. v. 44	- - - 480
Rhyl and Prestatyn (Extensions) Order, 1900, Rep. viii. 23	- - - 515
Robertsbridge and Pevensey Order, 1900, Rep. vi. 32	- - - 513
Rother Valley (Extensions) Order, 1902, Rep. x. 15	- - - 483, 516
Rother Valley (Light) Railway Act, 1896 (59 & 60 Vict. c. lxxvi.)	- - 476
Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51)	- - 519
ss. 3, 11, 12, 32	- - - 189
ss. 4, 5	- - - 189, 281
s. 33	- - - 279, 280
s. 54	- - - 273
s. 123, Sched. C.	- - - 281

	PAGE
Roads and Streets in Police Burghs (Scotland) Act, 1891 (54 & 55 Vict. c. 32) - - - - -	189
Rules Publication Act, 1893 (56 & 57 Vict. c. 66), ss. 1—3 - - -	268
Settled Land Act, 1882 (45 & 46 Vict. c. 38) - - - - -	87
ss. 3, 4 - - - - -	506
s. 25 - - - - -	86
s. 30 - - - - -	87
Sewers, Bill of (23 Hen. 8, c. 5) - - - - -	154
Sheerness and District Order, 1901, Rep. VIII. 16 - - -	486, 492, 509
Shoeburyness Military Tramways Order, 1893, London Gazette, Apr. 25, 1893 (p. 2430) - - - - -	288, 293
Shoeburyness Military Tramways Order, 1893, Amendment Order, 1896, Stat. R. and O. 1896, No. 670 - - - - -	288, 291, 293
Short Titles Act, 1896 (59 & 60 Vict. c. 14) - - - - -	92, 100, 110, 495, 511, 512, 523
Southampton Corporation Tramways Act, 1897 (60 & 61 Vict. c. cxxvi.) - - - - -	179
ss. 2, 3 - - - - -	185
Southampton Street Tramways Act, 1877 (40 & 41 Vict. c. ccxxi.) - - -	185
s. 48 - - - - -	185
Southend-on-Sea and District Order, 1899, Rep. v. 38 - - -	457
South Staffordshire Order, 1900, Rep. v. 39 - - - - -	484
Southwold Order, 1902, Rep. VIII. 17 - - - - -	489, 505, 509
Spen Valley Order, 1901, Rep. v. 40 - - - - -	485, 488, 491, 494
Spen Valley (Extensions) Order, 1901, Rep. VII. 34 - - -	515
Spen Valley and Morley Extensions Order, 1902, Rep. x. 19 - - -	515, 516
Stage Carriages Act, 1832 (2 & 3 Will. 4, c. 120) - - - - -	161
Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66) - - -	258
Statute Law Revision (No. 2) Act, 1890 (53 & 54 Vict. c. 51) - - -	281
Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19) - - -	212, 258
Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54) - - -	91, 260
Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22) - - -	148, 279
Stipendiary Magistrates Act, 1858 (21 & 22 Vict. c. 73), s. 1 - - -	95
Stonehouse Creek Bridge Act, 1767 (7 Geo. 3, c. lxxiii.), s. 12 - - -	160
Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) - - -	256, 444
s. 5 - - - - -	207
s. 31 - - - - -	257
ss. 33, 34 - - - - -	95, 256
Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) - - -	256, 444
ss. 6, 35 - - - - -	214
s. 20 (10) - - - - -	256
s. 54 - - - - -	95
Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4 - - -	258
Summary Jurisdiction (Scotland) Act, 1864 (27 & 28 Vict. c. 53) - - -	444
Summary Jurisdiction (Scotland) Act, 1881 (44 & 45 Vict. c. 33) - - -	444
Sunday Observance Act, 1625 (1 Car. 1, c. 1) - - - - -	162
Sunday Observance Act, 1677 (29 Car. 2, c. 7) - - - - -	162
Swansea and Oystermouth Railway Act, 1804 (44 Geo. 3, c. lv.) - - -	165

	PAGE
Tanat Valley Order, 1899, Rep. II. 22 - - - -	456, 488, 504
Tanat Valley (Amendment) Order, 1901, Rep. IX. 21 - - -	517
Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 95 - - -	497
Telegraph Act, 1863 (26 & 27 Vict. c. 112) - - - -	518
ss. 6—8 - - - -	136, 152
s. 13 - - - -	157
s. 15 - - - -	169
Telegraph Act Amendment Act, 1866 (29 & 30 Vict. c. 30) - - -	518
Telegraph Act, 1868 (31 & 32 Vict. c. 110) - - - -	518
s. 3 - - - -	179
Telegraph Act, 1870 (33 & 34 Vict. c. 88) - - - -	518
Telegraph Act, 1878 (41 & 42 Vict. c. 76) - - - -	88, 518, 569
s. 2 - - - -	438, 573
s. 6 - - - -	85, 436, 518
s. 7 - - - -	518, 572
ss. 8, 9 - - - -	518
Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 8- - - -	136, 152
Telegraph Act, 1899 (62 & 63 Vict. c. 38), s. 4- - - -	518
Tickhill Order, 1901, Rep. VII. 35 - - - -	509
Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49)- - -	205
ss. 4 (3), 6, 8 - - - -	272
s. 5 - - - -	272, 286, 521
s. 7 - - - -	272, 521
Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34),	
ss. 61, 62 - - - -	152
s. 79 - - - -	142
Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89) - - - -	205
ss. 3, 37—68 - - - -	204
ss. 21—23 - - - -	263
s. 28 - - - -	202
s. 38 - - - -	161, 206
s. 202 - - - -	208
Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14)- - - -	206
s. 2 - - - -	161
Trafalgar Square Act, 1844 (7 & 8 Vict. c. 60), s. 3 - - - -	512
Tramways Act, 1870 (33 & 34 Vict. c. 78) - 1, 2—5, 9, 10, 60, 91, 288,	
293—295, 423, 433	
ss. 1, 2 - - - -	91
s. 3 - - - -	92, 295, 324, 413
Part I. - - - -	2, 9, 95
s. 4 - - - -	84, 95, 324, 348, 349
s. 5 - - - -	3, 33, 96, 98
s. 6 - - - -	99, 325, 327, 329, 342, 345
s. 7 - - - -	100, 110
s. 8 - - - -	101
s. 9 - - - -	10, 24, 102, 325, 384, 430, 431
s. 10 - - - -	106, 439, 440
s. 11 - - - -	107
s. 12 - - - -	107, 299, 333, 334, 410
s. 13 - - - -	109, 332, 350
s. 14 - - - -	12, 84, 96, 109, 332

Tramways Act, 1870 (33 & 34 Vict. c. 78),

						PAGE
s. 15 -	-	-	-	-	-	-3, 110, 289, 424, 425
s. 16 -	-	-	-	-	-	- 96, 114, 326
s. 17 -	-	-	-	-	-	- 115, 442
s. 18 -	-	-	-	-	-	115, 326, 335—338
s. 19 -	-	-	-	-	-	- 41, 118, 222
s. 20 -	-	-	-	-	-	- 121, 443, 625
s. 21 -	-	-	-	-	-	- 124
Part II. -	-	-	-	-	-	3, 125
s. 22 -	-	-	-	-	-	- 125, 424
s. 23 -	-	-	-	-	-	- 125
s. 24 -	-	-	-	-	-	- 126
s. 25 -	-	-	-	-	-	132, 325, 427, 428, 432
s. 26 -	-	-	-	-	-	- 134, 427, 428
s. 27 -	-	-	-	-	-	- 140
s. 28 -	-	-	-	-	-	- 142, 428
s. 29 -	-	-	-	-	-	- 146
s. 30 -	-	-	-	-	-	35, 148, 436, 445
s. 31 -	-	-	-	-	-	- 153
s. 32 -	-	-	-	-	-	94, 154, 262, 429
s. 33 -	-	-	-	-	-	105, 157, 429, 441, 445
Part III. -	-	-	-	-	-	3, 160
s. 34 -	-	-	-	-	-	160, 290, 325, 427
s. 35 -	-	-	-	-	-	54, 165, 441
s. 36 -	-	-	-	-	-	- 167
ss. 37, 38 -	-	-	-	-	-	- 168
ss. 39, 40 -	-	-	-	-	-	- 169
s. 41 -	-	-	-	-	-	118, 120, 170
s. 42 -	-	-	-	-	-	- 172
s. 43 -	4, 10, 34, 42, 64, 73, 175,	412, 442, 612,	613, 623,			625—627
s. 44 -	-	-	-	-	-	- 190
s. 45 -	-	-	-	-	-	193, 206, 440
s. 46 -	-	-	-	-	-	94, 195, 375—377, 434, 442
s. 47 -	-	-	-	-	-	- 203
s. 48 -	-	-	-	-	-	- 161, 204
s. 49 -	-	-	-	-	-	- 209
s. 50 -	-	-	-	-	-	- 210, 258
s. 51 -	-	-	-	-	-	- 201, 212, 215, 216
s. 52 -	-	-	-	-	-	- 167, 214
s. 53 -	-	-	-	-	-	- 219
s. 54 -	-	-	-	-	-	162, 163, 222, 290
s. 55 -	-	-	-	-	-	- 146, 223
s. 56 -	-	-	-	-	-	256, 291, 355, 379, 444
s. 57 -	-	-	-	-	-	52, 162, 259
s. 58 -	-	-	-	-	-	- 260
s. 59 -	-	-	-	-	-	- 162, 260
s. 60 -	-	-	-	-	-	- 162, 262
s. 61 -	-	-	-	-	-	- 162, 263
s. 62 -	-	-	-	-	-	162, 163, 264
s. 63 -	-	-	-	-	-	- 264, 445
s. 64 -	-	-	-	-	-	94, 267, 324

	PAGE
Tramways Act, 1870 (33 & 34 Vict. c. 78),	
Sched. A. - - - - -	3, 92, 96, 269 , 324
Part I. - - - - -	- - - - - 413
Part III. - - - - -	- - - - - 189, 348
Sched. B. - - - - -	- - - - - 274
Part I. - - - - -	- - - - - 325, 342
Part II. - - - - -	- - - - - 326, 327, 345
Part III. - - - - -	- - - - - 329, 347, 348
Part IV. - - - - -	- - - - - 332, 333, 350
Sched. C. - - - - -	- - - - - 277
Tramways (Ireland) Acts, 1860 to 1891 - - - - -	- - - - - 308
Tramways (Ireland) Act, 1860 (23 & 24 Vict. c. 152)	- - - - - 2, 92, 106
ss. 1, 5 - - - - -	- - - - - 15
Tramways (Ireland) Act, 1861 (24 & 25 Vict. c. 102)	- - - - - 15, 92
Tramways (Ireland) Amendment Act, 1871 (34 & 35 Vict. c. 114)	- - - - - 92
Tramways (Ireland) Amendment (Dublin) Act, 1876 (39 & 40 Vict. c. 65)	- - - - - 92
Tramways (Ireland) Amendment Act, 1881 (44 & 45 Vict. c. 17)	- - - - - 92
Tramways and Public Companies (Ireland) Act, 1883 (46 & 47 Vict. c. 43)	- - - - - 92
Tramways and Public Companies (Ireland) Act, 1883, Amendment Act, 1884 (48 & 49 Vict. c. 5)	- - - - - 92
Tramways (Ireland) Amendment Act, 1891 (54 & 55 Vict. c. 2)	- - - - - 92
Tramways (Ireland) Act, 1895 (58 & 59 Vict. c. 20)	- - - - - 92
Tramways (Ireland) Act, 1900 (63 & 64 Vict. c. 60)	- - - - - 92
Tramways Orders Confirmation (No. 1) (Bolton and Suburban) Act, 1878 (41 & 42 Vict. c. ccxxxi.)	- - - - - 115
Tramways Orders Confirmation Act, 1879 (42 & 43 Vict. c. xciii.), s. 3 -	164
Tramways Orders Confirmation (No. 1) (Dudley, Netherton, Old Hall and Cradley) Act, 1890 (53 & 54 Vict. c. clxxxi.)	- - - - - 114
Tramways Orders Confirmation (No. 2) (Newcastle-upon-Tyne Corporation) Act, 1895 (58 & 59 Vict. c. ci.)	- - - - - 114
Tramways Orders Confirmation (No. 3) (Dudley and Wolverhampton) Act, 1899 (62 & 63 Vict. c. cclxxiv.)	- - - - - 114, 185
Tramways Orders Confirmation (No. 3) (Gravesend, Rosherville and Northfleet) Act, 1899 (62 & 63 Vict. c. cclxxiv.)	- - - - - 114
Tramways Orders Confirmation (No. 5) (Rothesay) Act, 1900 (63 & 64 Vict. c. ccviii.)	- - - - - 114
Tramways Orders Confirmation (No. 1) (Devonport Corporation) Act, 1901 (1 Edw. 7, c. cclxxvii.)	- - - - - 114
Tramways Orders Confirmation (No. 2) (Leamington) Act, 1901 (1 Edw. 7, c. clxxxi.)	- - - - - 114
Tramways Orders Confirmation (No. 2) (West Riding, Knottingley Extension) Act, 1902 (2 Edw. 7, c. cciii.)	- - - - - 428
Tramways Orders Confirmation (No. 2) (Southampton Corporation) Act, 1902 (2 Edw. 7, c. cciii.)	- - - - - 115
Tramways (Scotland) Act, 1861 (24 & 25 Vict. c. 69)	- - - - - 2, 279 , 309
ss. 1, 2 - - - - -	- - - - - 279
ss. 3, 4 - - - - -	- - - - - 280
s. 5 - - - - -	- - - - - 281
ss. 6-8 - - - - -	- - - - - 282
ss. 9-12 - - - - -	- - - - - 283
s. 13 - - - - -	- - - - - 284
ss. 14-16 - - - - -	- - - - - 285
s. 17 - - - - -	- - - - - 181, 286

	PAGE
Transfer of Railways (Ireland) Act, 1890 (54 & 55 Vict. c. 2) -	92
Turnpike Road (Scotland) Act, 1830 (1 & 2 Will. 4, c. 43) -	281, 282, 283
Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 15, Sched. - - - - -	59
Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 5 - - - - -	497
Vale of Rheidol (Light) Railway Act, 1897 (60 & 61 Vict. c. clxxiv.)-	476
Vale of Rheidol (Amendment) Order, 1902, Rep. x. 26 -	505, 516, 517
Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67),	
s. 4 - - - - -	59
Sched. II. - - - - -	59
Sched. III. - - - - -	71
Valuation of Lands (Scotland) Amendment Act, 1867 (30 & 31 Vict. c. 80) - - - - -	497, 522
Valuation of Lands (Scotland) Amendment Act, 1879 (42 & 43 Vict. c. 42) - - - - -	522
Valuation of Lands (Scotland) Amendment Act, 1887 (50 & 51 Vict. c. 51) - - - - -	497, 522
Valuation of Lands (Scotland) Acts Amendment Act, 1894 (57 & 58 Vict. c. 36) - - - - -	497, 522
Wakefield and District Order, 1901, Rep. vii. 36 -	480, 484, 487, 492, 494
Wales and Berwick Act, 1746 (20 Geo. 2, c. 42), s. 3 -	117, 276, 334
Wales and Laughton Order, 1901, Rep. viii. 19 -	483, 486, 488
Wallasey Tramways Act, 1878 (41 & 42 Vict. c. cccxxviii.), s. 37 -	185
Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17),	
s. 2 - - - - -	179
s. 12 - - - - -	151
ss. 18—27 - - - - -	261
s. 30 - - - - -	157
ss. 28—34 - - - - -	136, 152
ss. 32, 33 - - - - -	142
Welshpool and Llanfair Order, 1899, Rep. ii. 23 -	456, 461, 482, 483, 494
Welshpool and Llanfair (Amendment) Order, 1901, Rep. ix. 27 -	504, 517
West Hartlepool (Deviations, &c.) Order, 1901, Rep. vii. 38 -	515, 516
West Highland Railway Guarantee Act, 1896 (59 & 60 Vict. c. 58) -	461
West Highland Railway (Loch Fyne) Order, 1898, Rep. ii. 28 -	482, 483, 485, 493
West Manchester Order, 1899, Rep. ii. 19 - - - - -	483, 485, 493
Wick and Lybster Order, 1900, Rep. v. 54 - - - - -	456, 461
Wigan Order, 1902, Rep. vii. 39 - - - - -	487
Worcester and District Order, 1901, Rep. vi. 38 - - - - -	492
Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37)-	69, 85, 88, 254, 497
s. 7 - - - - -	88, 253, 254, 255, 309
Wotton-under-Edge Order, 1900, Rep. vii. 42- - - - -	483
Wroughton Vale Order, 1898, Rep. i. 15 - - - - -	482, 483, 488

ADDENDA ET CORRIGENDA.

PAGE

- 76, note (o), *add*: (1903) 2 K. B. 354; 72 L. J. K. B. 677.
- 110, lines 22, 23, *for* Municipal Corporations (Borough Funds) Act, 1872, *read* Borough Funds Act, 1872.
- „ line 27, *add*: County Councils have now been given power to incur costs in promoting bills by County Councils (Bills in Parliament) Act, 1903 (3 Edw. 7, c. 9). See also Borough Funds Act, 1903 (3 Edw. 7, c. 14).
- 162, line 23, *for* 3 Car. 1, *read* 1 Car. 1.
- 205, line 38, *add*: Burgh Police (Scotland) Act, 1903 (3 Edw. 7, c. 33), s. 50, provides for the carrying of certain lights by carriages, a word which includes tramway cars by Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 4.
- 227, line 44, *add*: See also *Cowper v. Laidler*, (1903) 2 Ch. 337; 72 L. J. Ch. 578.
- 229, line 5, *add*: 72 L. J. Ch. 695.
- 255, line 38, *add*: (1903), W. N. 161.
- 256, line 1, *add*: (1903), W. N. 161.
- 320, line 18, *for* Municipal Corporations (Borough Funds) Act, 1872, *read* Borough Funds Act, 1872.
- „ line 19, *add*: See also, now, County Councils (Bills in Parliament) Act, 1903 (3 Edw. 7, c. 9), and Borough Funds Act, 1903 (3 Edw. 7, c. 14).
- 453, line 8, *read*: 3 Edw. 7, c. 40.
- 482, line 10, *add*: 72 L. J. Ch. 705.
- 496, line 23, *read*: 3 Edw. 7, c. 30.
- 507, lines 31, 32, *read*: now the Board of Agriculture and Fisheries, by Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2 (1b), and Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), s. 1.
- 511, lines 9—11, *read*: the Board of Agriculture and Fisheries for the Land Commissioners (Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2 (1b), and Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), s. 1).
- 516, line 17, *add*: An alternative procedure is now provided by Railways (Electrical Power) Act, 1903 (3 Edw. 7, c. 30).
- 528, line 31, *for* Board of Agriculture, *read* Board of Agriculture and Fisheries, by Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31), s. 1.

Part I.

TRAMWAYS AND LIGHT RAILWAYS.

CHAPTER I.

TRAMWAYS AND LIGHT RAILWAYS.

BRITISH statute law contains no definition of a "tramway." In *Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority* (a), Wills, J., remarks: "As definition is always *periculosæ plenum opus aleæ*, I shall follow the example of Legislature and not attempt to define either railway or tramway. It appears sufficient to say that no ordinary person has any difficulty in distinguishing between the two." That may have been correct in 1892; but at the present time, if, not an ordinary person, but the learned judge himself, were set down before one of those systems of traction which have been constructed in part under Tramways Act, 1870, and in part under Light Railways Act, 1896, he would find it impossible to discover by simple inspection whether the particular piece of line at which he was looking was a tramway or a light railway. For British statute law contains no definition of "light railway" either.

It is necessary, therefore, to sketch briefly the manner in which the present position has come about. Ireland has the honour of being the first portion of

(a) [1892] 1 Q. B. 357; 61 L. J. M. C. 124.

Chap. I.

the British Islands on which tramway and light railway legislation was conferred. In 1860 the Tramways (Ireland) Act (23 & 24 Vict. c. 152) was passed, and was followed by a great number of other Acts, which are enumerated *post*, p. 92, and which constitute a complete and elaborate code for tramways and light railways. Many lines have been constructed under the provisions of this code, but the present work is not concerned with them, save in so far as they have any bearing on the tramway and light railway legislation applied to Great Britain.

Scotland followed in 1861 with the peculiar and useless statute printed *post*, p. 279, the Tramways (Scotland) Act, 1861 (24 & 25 Vict. c. 69). This Act proved to be of no practical use, for the reasons which are detailed in the note at the commencement of the Act itself, and need not be repeated here.

In England and Wales before 1870 there existed a certain number of private or semi-private tramways (*b*), and a certain number of tramways were laid down under special Acts, *e.g.*, at Liverpool in 1868, and in London in 1869. There were also certain unauthorised attempts to lay tramways on public roads without statutory powers which were speedily and thoroughly suppressed (*c*).

The existence of tramways was also recognized in certain general Acts—Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 2; Railway Companies Securities Act, 1866 (29 & 30 Vict. c. 108), s. 2; and Improvement of Land Act, 1864 (27 & 28 Vict. c. 114).

In 1870 the Tramways Act, 1870 (33 & 34 Vict. c. 78), was passed. This Act extends to England, Wales and Scotland, and provides (a) Part I., a new and expeditious mode of obtaining statutory authority for tramways, that is to say, by a Provisional Order made by the Board of Trade and confirmed by Act

(*b*) See the cases cited in note (*s*) to sect. 15 of Tramways Act, 1870.

(*c*) See the cases cited in the note to the title of Tramways Act, 1870, *post*, p. 91.

of Parliament; and (b) Parts II. and III., a set of Chap. I.
 clauses forming the code which applies to tramways
 on public roads, whether authorised by Provisional
 Order or by special Act, unless expressly varied or
 excepted by such Order or Act.

A writer, who is presenting a statute with annotations, should eschew the practice of setting out beforehand a *résumé* of its provisions in other, and probably more confused, language. Only the most salient features of the Act, then, will be noticed here.

I. Every application for a Provisional Order, other than those made by local authorities (defined in Part I. of Sched. A. to the Act), must be made with the consent of the local authorities. The same provision has been embodied in the Standing Orders of both Houses with reference to the promotion of private Bills for the construction of tramways. It is this feature which has been the chief obstacle to progress in the construction of tramways. Local authorities are not distinguished for liberality in their attitude towards the commercial enterprises of persons other than themselves, and are apt to take up an obstructive attitude even towards proposals which are for the benefit of their own district, and even if they do not intend to carry out a similar enterprise on their own account. There are, it is true, two respects in which the absolute veto of local authorities is modified: (a) Under sect. 5 of the Act, and Standing Order 22, the Board of Trade or the Committee may dispense with the consent of the other local authorities, if the local authorities controlling two-thirds of the proposed route consent; (b) The Standing Orders relating to consent may be dispensed with in a proper case. But the Standing Orders Committees are unwilling to dispense with them except under very special circumstances.

II. Again, sects. 8 and 15 of the Act prohibit the incorporation with Provisional Orders of the provisions of

Chap. I. the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

These two features—the necessity of obtaining the local authorities' consent and the prohibition of compulsory purchase—proved to be most injurious obstacles even in the days of horse traction. They have been even more serious since the introduction of mechanical power. (i) A tramway worked by mechanical power is apt to be of larger dimensions than a horse tramway, and to extend into the districts of a greater number of local authorities, whom it is more difficult to pacify than a smaller number. (ii) A mechanical tramway requires land, for the purposes of generating stations and other things, which it is generally difficult to acquire by agreement, and in respect of which, if acquired by agreement, the promoters may be liable in damages on account of their peculiar user. Further, till recently the provisions inserted by the Board of Trade in Provisional Orders with regard to the use of mechanical power were so onerous that promoters preferred to go to the expense of obtaining a special Act by which they might be granted easier terms.

III. Sect. 43 of the Act provides for the terms on which local authorities may purchase any tramways within six months of the expiration of twenty-one years from the date of the Order or Act, or within six months of the expiration of each subsequent period of seven years. This section, as interpreted by the House of Lords in *Edinburgh Street Tramways Co. v. Lord Provost and Magistrates of Edinburgh* (c) and *London Street Tramways Co. v. London County Council* (d), enables the local authority to buy the tramways at the specified times for what is called “old iron price.” With this fate overhanging them (of which, however, till 1894 they seem to have been only partly con-

(c) [1894] A. C. 456; 21 R. (H. L.) 78; 63 L. J. Q. B. 769.

(d) [1894] A. C. 489; 63 L. J. Q. B. 769.

scious), promoters were not likely to spend much money even on horse tramways, still less on expensive systems of mechanical traction. But since the legislation referred to below, the purchase clauses of Provisional Orders and Acts have frequently been modified so as to postpone the time of purchase and to impose more equitable terms on local authorities.

A "tramway," then, which originally meant, presumably, a "beam way," a track for vehicles composed of two parallel beams, can now only be defined as a line of rails and its appurtenances to which Tramways Act, 1870, applies, a definition neither illuminative nor satisfactory in form.

It may be conjectured that, but for the introduction of mechanical traction, all lines of rails laid on public roads would still be subject to this tramway code without modification. Indeed, this was the only code existing in Great Britain for years after other progressive nations had developed systems of mechanical traction.

But in 1896 a great step in advance was made by the passing of the Light Railways Act, 1896 (59 & 60 Vict. c. 48). "Light railways" had previously been referred to in some of the Irish Acts already alluded to, and Regulation of Railways Act, 1868, ss. 27—29, had provided that the Board of Trade might license the construction or working of a railway as a light railway, subject to conditions and regulations imposed by them. Such regulations were not to authorise a greater weight than eight tons on any pair of wheels, or a greater speed than twenty-five miles an hour. None of these Acts contains a definition of "light railway," neither does the Act of 1896.

The Act of 1896 created an entirely new body, the Light Railway Commissioners, with powers which should cease, unless extended, at the end of 1901. Their powers have in fact been extended from year to year since that date. They hear applications

Chap. I. for Light Railway Orders and objections thereto, and make the Orders accordingly. These Orders are subject to modification and confirmation by the Board of Trade, after the Board have heard such objectors as may still persist in their objection, or such fresh objectors as may have appeared upon the scene. After such confirmation the Order has effect as if enacted by Parliament. Thus by this Act the Legislature has delegated to non-Parliamentary bodies the absolute power to legislate for light railways. No confirming Act is needed, as in the case of a Provisional Order under Tramways Act, 1870. In certain cases, however (sect. 9), the Board of Trade may express the opinion that the nature of the scheme demands its submission to Parliament, and by refusing to confirm the Order leave the promoters to proceed by Bill.

The Act places no limitation on what a Light Railway Order may contain; it merely specifies (sect. 11) what kind of clauses it will be most usual and desirable to insert. It does not hamper promoters as Tramways Act, 1870, does. An application may be made by any local authority, except a parish council, singly or jointly (with certain limitations, see sect. 3), or by any company or person, with or without the consent of the local authorities. The promoters, however (sect. 7(1)), have to satisfy the Commissioners that they have taken all reasonable steps for consulting the local and road authorities and the owners and occupiers who are affected by their scheme. Thus the local authorities have no power to veto a light railway scheme, though their dissent will always have a powerful influence on the decision of the Commissioners (*e*).

Again, the Act does not prohibit compulsory purchase of land; indeed, it provides (sect. 11 (a)) for the incorporation of all or any of the provisions of the

(*e*) See note (*g*) to sect. 7 of the Act.

Lands Clauses Acts, while forbidding variations of the compulsory purchase sections of those Acts, other, of course, than the variations made by sects. 13 (1) and 14 of the Act itself (*f*). Chap. I.

Lastly, there is no provision for any special terms of compulsory purchase, or, indeed, any purchase at all by local authorities; that is left, by sect. 11 (1), entirely to the discretion of the Commissioners and the Board of Trade. The Act further introduces for the first time in Great Britain the advance of money by a local authority or the Treasury, and the free grant of money by the Treasury for the purpose of light railways. But it is not, like Tramways Act, 1870, a Clauses Act for light railways; the proper clauses and other details are left to the Commissioners and the Board.

After the passing of the Act, the problem at once presented itself: What is a light railway within the meaning of this Act? Is it a thing in the nature of a railway or in the nature of a tramway, or both, or neither? It is a remarkable circumstance that the Act itself contains no definite answer to the question. The defect was to have been removed by a clause in the abortive Light Railways Bill of 1901. The Commissioners decided, under the advice of the Law Officers, that the Act was intended to cover not only schemes in the nature of railways if they were "light," whatever that might mean (probably limited in respect of load or speed, or both), but also schemes in the nature of tramways where lines were proposed wholly or mainly along public highways. Later on, they even approved of a lift worked by water tanks as a "light railway."

Thus it has become the practice to divide light railway schemes into three classes, A, B, and N, that is to say, light railways of the railway pattern, light

(*f*) See note (*x*) to sect. 11.

Chap. I. railways of the tramway pattern, and neutrals; and Light Railway Orders are of two distinct types in consequence. They refuse, however, somewhat illogically, to consider schemes for tramways which are to be situated wholly within one borough or urban district (*g*). Neither will they permit their powers to collide with any Parliamentary or proposed Parliamentary schemes (*g*). But, with these exceptions, their attitude towards proposals is one of extreme liberality; they pay strict attention to the fact that the Act is expressed to be “An Act to *facilitate* the Construction of Light Railways in Great Britain.”

The only subsequent legislation which need be noted here consists of the Military Tramways Act, 1887 (50 & 51 Vict. c. 65), and the Naval Works Act, 1899 (62 & 63 Vict. c. 42), s. 2, which provide special methods for the authorisation of military and naval tramways, and which are printed *post*, pp. 287, 296; and of the Private Legislation Procedure (Scotland) Act, 1899 (62 & 63 Vict. c. 47), which provides, in Scotland, a special procedure by Provisional Order for persons who would otherwise have promoted a private Bill in Parliament (*post*, p. 310).

We therefore have at the present time two parallel codes for tramways and light railways. The later code covers railways which are constructed along a track of their own as well as street railways, but, as far as street railways are concerned, the two codes cover exactly the same subject-matter. Whether Parliament will take in hand a substantial codification of the two codes depends on matters which have no connection with tramways or light railways. In the Metropolis, the report of the Royal Commission on London Traffic will probably lead to the placing of some legislative restriction on metropolitan schemes. But, apart from the anomaly of the co-existence of

(*g*) See note (*d*) to sect. 1 of the Act.

two codes, the present position is not entirely unsatisfactory. The two codes only come into actual collision with one another in minor matters, such as Workmen's Compensation (see *post*, pp. 253, 255). In most respects, inasmuch as the Board of Trade has the ultimate control of the details under both codes, it is found that the two codes, by a process of reciprocal attrition, and in consequence of this single control of the Board of Trade, have gradually become assimilated to one another. The Orders made for light railways of Class B are substantially the same as the Provisional Orders made under Tramways Act, 1870, if there be added to the latter the general provisions of Tramways Act, 1870, which, being of universal application to all tramways, are not repeated in each separate Order. And both sets of Orders approximate very closely to the ordinary provisions of the special Acts authorising tramways. Again, the regulations issued by the Board of Trade for the use of mechanical power are issued in the same form for tramways and for light railways of Class B.

The promoter, then, may at present pursue one of three courses, and his selection must be determined by circumstances:—(i) He may apply for a Provisional Order under Part I. of Tramways Act, 1870 (a procedure now much more frequently adopted by local authorities than by private promoters); (ii) he may promote a private Bill under Standing Orders which substantially embody the provisions of Part I. of that Act, or, in Scotland, he may petition the Secretary for Scotland for a Provisional Order under Private Legislation Procedure (Scotland) Act, 1899; (iii) he may apply to the Light Railway Commissioners for a Light Railway Order.

If there is no opposition to the scheme, or if the opposition be such that it can probably be disposed of before the Board, he will choose the first mode of procedure, on account of its comparative inexpensive-

Chap. I.

ness. But if the opposition is substantial, and such as would be likely to result in petitions being presented against the confirming Act, it will be expedient for him to proceed at once by private Bill, and so avoid the preliminary inquiry on a Provisional Order before the Board of Trade. He will also proceed by private Bill if his scheme involves matters which it is not within the practice or the powers of the Board to authorise, or which he thinks they would not be likely to authorise, by Provisional Order.

If he adopts either of the first two modes of procedure, he must remember that he is subject to the provisions of Tramways Act, 1870; that absence of consent on the part of the local authorities must prove fatal to his scheme, except where, in the case of a private Bill, the Standing Order relating to such consent is dispensed with; and that powers for the compulsory purchase of land cannot be given by a Provisional Order. He does not, however, now labour under the old difficulty with regard to compulsory purchase by local authorities, inasmuch as the Board of Trade and Parliament now usually vary the provisions of sect. 43 of Tramways Act, 1870, so as to extend the date of purchase and to impose more reasonable terms of payment, particularly where the scheme involves a large expenditure. But, in the case of Provisional Orders, he is still hampered by the "9 ft. 6 in." rule under sect. 9 of the Act, and, in the case of private Bills, by the same rule embodied in the Standing Orders, unless these Orders are dispensed with in the particular case.

If, then, the local authorities consent, or their consent is likely to be dispensed with by Parliament, and if the other difficulties which arise under the Tramways Act, 1870, do not trouble him, and if it seems probable that the scheme contains matters which would not be authorised by a Light Railway Order, or is such a scheme as the Light Railway Commis-

sioners would refuse to deal with, or as the Board of Trade would deem suitable for Parliament under sect. 9 of Light Railways Act, 1896, then the promoter will proceed by private Bill. Chap. I.

But if the consent of the local authorities cannot be obtained, or can only be obtained on extravagant terms, yet the scheme receives strong local support, or is of obvious public benefit, so that the Commissioners and the Board of Trade would be likely to override the dissent of the local authorities, then it will be advisable to apply for a Light Railway Order. And, generally, the procedure under Light Railways Act, 1896, should be adopted wherever it is feasible. It is cheap, it is expeditious, and, above all, it is subject to no restrictions other than those which the Commissioners and the Board see fit to impose. Restrictions imposed by a public body to meet the circumstances of a particular case cannot fail to be less onerous than those imposed by general legislation.

CHAPTER II.

LOCUS STANDI.

A. *Locus standi against Tramway Bills.*

THIS portion of the subject has become of somewhat diminished importance since the passing of Light Railways Act, 1896, but it still remains important with regard to (a) Special Tramway Bills promoted directly in Parliament; (b) Provisional Orders for Tramways brought before Parliament for confirmation; (c) Proposals for Light Railways submitted to Parliament on the refusal of the Board of Trade to confirm an Order of the Light Railway Commissioners under Light Railways Act, 1896, s. 9 (3). Sect. 14 of Tramways Act, 1870, assimilates the principles of *locus standi* against special tramway Bills and against Bills for confirming Provisional Orders.

It is open to those who have a sufficient interest to oppose in Parliament any particular scheme, and to urge its rejection on the ground that the proposed line or lines would be so detrimental either to general traffic or to the interest affected as to outweigh any public advantage which would be gained by the construction of the tramway. The word "tramway" must be taken in this portion of the present work to include tramways proper and light railways of Class B (see *ante*, p. 7). There are no decisions at present on *locus standi* with respect to Bills for light railways of Class A.

I. Of Railways.

(i) ON THE GROUND OF COMPETITION.

Standing Order 130 (*post*, p. 463) gives the Referees complete discretion as to the admission of petitioners to be heard on this ground, but the position of railways in relation to tramways is a very special one. Tramway promoters place their rails and run their carriages on a road already made, and the tramway, when made, does not deprive the public of property in the road, while in the case of a railway company a road has to be formed for the railway, which, when made, is used only for the purposes of the railway and is the property of the company for all purposes, subject to certain rights of the executive Government in times of emergency. This difference explains in a great measure the distinction which has been drawn and may (subject to the qualification mentioned below) be drawn in the future by the Referees with respect to the competition between a tramway and a railway and that created by one railway against another. The importance of this difference in connection with *locus standi*, however, while remaining considerable in the case of tramways which are worked by animal power, becomes much less where mechanical power is employed, and decreases more and more as the power employed, the speed, and other elements of successful competition become greater and greater. It may well be that in some cases the difference will vanish entirely, and it will be impossible to distinguish a tramway from a railway. Indeed, in countries where such matters are better understood than in the United Kingdom this has already happened.

The *locus standi* of railways on the ground of competition must therefore be discussed under two distinct heads:—

(a) *Where the tramways are to be worked by animal power.*—This portion of the subject is, happily, of

Chap. II. little importance now ; it may be confidently hoped that no more such tramways will be constructed on any considerable scale. Such tramways, running as they do on a road under or parallel to a railway, which the public and their vehicles have also a right to use, cannot be said to introduce a new and separate competition, as they would if they were railways, but rather to develop and add another element to an existing competition, of which, from the nature of the case, the railway company was never in a position to complain. In point of fact, the construction of such a tramway amounts, so far as the railway is concerned, to nothing more than the placing of a more commodious omnibus on the public road. The Court of Referees have therefore not thought the competition between such tramways and railways to be of such a character as to give the latter a *locus standi* against the former on the ground of competition. This point was decided as early as 1870, when a *locus standi* was refused to the London & North Western, the Metropolitan, and the North London Railways respectively, who petitioned to be heard on the ground of competition(*a*). The principle laid down in these cases as to metropolitan tramways would apply equally to other tramways. And it was held that no further right to a *locus standi* was given by the fact that the proposed line was intended for the carriage of goods or minerals, or that it was expressly constructed to admit the passage of vehicles used on railways(*b*).

Reference may also be made to two Irish cases, in which it was held that the Irish Tramways Acts of

(*a*) *North London Tramways Bill* (1870), 2 Cl. & St. 82 ; *London Street Tramways Bill* (1870), 2 Cl. & St. 85 ; *North Metropolitan Tramways Bill* (1870), 2 Cl. & St. 89 ; followed in *Tramways Orders (London Street Tramways Extensions, &c.) Bill* (1871), 2 Cl. & St. 198, and *Tramways Orders (London Street Tramways, Caledonian Road Extension) Bill* (1871), 2 Cl. & St. 199.

(*b*) *Glasgow, Coatbridge and Airdrie Tramways Bill* (1872), 2 Cl. & St. 282.

1860 and 1861—and in particular sects. 1 and 5 of the former—did not override the general practice of Parliament on the point of a railway company's *locus standi* (c). Chap. II.

(b) *Where the tramways are to be worked by mechanical power.*—In a case in 1877, where the Great Eastern Railway petitioned on the ground of competition, the steam clauses were withdrawn pending the conclusion of a Parliamentary inquiry on the subject, and the Referees expressly declined to decide the general question of the *locus standi* of railway companies against such tramways (d). Again, in a later case, the Referees once more refrained from deciding the general question on the ground that the proposed line threatened no competition, and would not have done so, even had it been a railway instead of a tramway (e).

In two early cases, however, a *locus standi* was allowed to a railway company against the acquisition of tramways, or power to construct tramways, on the ground of competition; but the circumstances in each instance were of a very special nature (f).

Since these early times the subject has been frequently discussed, but owing to the inherently casual nature of *locus standi* proceedings the decisions of the Referees are somewhat difficult to reconcile.

In 1884, however, a general *locus standi* was given to a railway company against a Bill for a steam tramway on the ground of competition (g). In 1893 a railway was allowed a *locus standi* against the clauses and schedule of a Bill which authorised and regulated the use of electricity on certain tramways, inasmuch

(c) *Dublin Tramways Bill* (1871), 2 Cl. & St. 142; *Dublin Tramways Bill* (1873), 1 Cl. & R. 13.

(d) *North Metropolitan Tramways (New Works, &c.) Bill* (1877), 2 Cl. & R. 56.

(e) *Tramways Orders (Bury and District) Bill* (1881), 3 Cl. & R. 101.

(f) *Great Western Railway and Swansea Canal Companies' Bill* (1872), 2 Cl. & St. 248; *Great Western Railway Bill* (1876), 1 Cl. & R. 223.

(g) *Paisley and District Tramways Bill* (1884), 3 Cl. & R. 455.

Chap. II. as they might directly or indirectly affect the railway ; but it was given no general *locus* on the ground of competition, since the Bill, which also included certain powers of purchase and amalgamation, was held at most to improve existing competition (*h*). In another case in the same year the same point was decided in much the same way, though there was an additional question as to the safety of certain bridges over the railway (*i*).

Later on the point was taken in argument that the electrification of a tramway implies not merely improved competition, but an entirely new form of competition. No decision, however, was given, the Court considering that the competition, if any, was likely to be so small that they were not justified in granting the railway a *locus standi* (*k*).

In the following year a railway company was given a *locus standi* against a Bill by which it was sought to remove the restrictions of speed applying to a tramway and substitute the Board of Trade standard, the Court holding that the last-mentioned case did not apply, and that the change proposed might substantially create a new form of competition. They seem, however, to have been swayed to some extent by a dislike for the tactics of the tramway company (*l*). And, indeed, in the next case their decision in the preceding case was regarded as depending on exceptional circumstances, and the Court reverted to the decision which they gave in the case of the *Dublin Southern District Tramways Bill*, 1893, and disallowed the railway's *locus standi* (*m*).

In 1900 a *locus standi* was granted to two railway companies against proposed electric tramways on the

(*h*) *Dublin Southern District Tramways Bill* (1893), R. & S. 242.

(*i*) *Edinburgh Corporation Tramways Bill* (1893), R. & S. 256.

(*k*) *Dublin United Tramways (Electrical Power) Bill* (1897), 1 S. & A. 157.

(*l*) *Dublin Southern District Tramways Bill* (1898), 1 S. & A. 242.

(*m*) *Greenock and Port Glasgow Tramways Bill* (1899), 1 S. & A. 322.

ground of competition, and the Speaker's counsel stated that the decision must depend on the nature and extent of the tramway in each particular case (*n*). This case was followed later on in the same session (*o*), and again in 1901 (*p*). A *locus* was also granted to a railway against the construction of electric tramways which would form a junction with a light railway belonging to the promoters, on the ground of competition, though it seems dubious whether the proposed line did more than improve competition which already existed (*q*).

The principle, then, to which we are led by the above succession of cases is no real principle at all—namely, that the Referees will consider the circumstances of each individual case; but their tendency, in so far as they have a tendency, is, as would naturally be expected, to regard a tramway of the modern type as capable of offering serious competition to a railway, and therefore they are inclined to grant a railway, if other circumstances permit it, a *locus standi* to oppose the modernisation of an old, or the construction of a new, system of tramways.

A competitive *locus* has also been allowed to railway companies by Commissioners under Private Legislation Procedure (Scotland) Act, 1899 (*r*). (See *post*, p. 48.)

(ii) ON GROUNDS OTHER THAN COMPETITION.

(a) *Interference*.—Where under the provisions of a tramway Bill the proposed line will pass over or otherwise interfere with a railway bridge or its approaches, the railway company, although the use of the bridge

(*n*) *Airdrie and Coatbridge Tramways Bill* (1900), 2 S. & A. 1.

(*o*) *Glasgow District Tramways Bill* (1900), 2 S. & A. 9.

(*p*) *London County Council (Tramways and Street Widening) Bill* (1901), 2 S. & A. 57.

(*q*) *London United Tramways (Extensions) Bill* (1900), 2 S. & A. 23.

(*r*) *Aberdeen Suburban Tramways* (1902), 39 S. L. R. 872; *Greenock and Port Glasgow Tramways Extension* (1902), 39 S. L. R. 880.

Chap. II. may have been dedicated to the public, have, as owners of the bridge, a *locus standi* against the Bill, limited, however, to the clauses which authorise such interference (*s*). And a *locus standi* has been allowed to an underground railway company where interference with their works was threatened by a tramway to be constructed over their tunnel (*t*).

On the same principle the electrification of an existing tramway or the construction of an electric tramway may give a railway company a limited *locus standi* in respect of possible interference with the electrical appliances of the railway (*u*).

An unsuccessful attempt was once made to obtain for a railway company a general *locus standi* under Standing Order 133, which provides that "where a railway Bill contains provisions for taking or using any part of the lands, railway, stations or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against such provisions or against the preamble and clauses of such Bill" by making it apply to the case of a tramway Bill (*x*). Again, where a railway company were absolute owners not only of a bridge, but also of the approaches to it and the roadway across it, and were liable to keep the whole in repair, they failed to obtain an unlimited *locus standi* as owners whose lands were to be taken (*y*). Petitioners, however, to whom a limited *locus standi* is allowed on the ground of interference, are entitled to oppose the preamble of the Bill on the ground that

(*s*) *North London Tramways Bill* (1870), 2 Cl. & St. 82; *Vale of Clyde Tramways Bill* (1871), 2 Cl. & St. 137; *North Metropolitan Tramways (New Works, &c.) Bill* (1877), 2 Cl. & R. 56; *Edinburgh Corporation Tramways Bill* (1893), R. & S. 256.

(*t*) *Tramways Orders (London Street) Bill* (1871), 2 Cl. & St. 198.

(*u*) *Dublin Southern District Tramways Bill* (1893), R. & S. 242; *Edinburgh Corporation Tramways Bill*, *ub. sup.*

(*x*) *Vale of Clyde Tramways Bill*, *ub. sup.*

(*y*) *Brentford, Isleworth and Twickenham Tramways Bill* (1879), 2 Cl. & R. 139.

the proposed interference with their works will be so hurtful to them as to outweigh the public expediency of the tramway(*z*). As might be expected, a *locus standi* will always be allowed to the owners of a railway against a proposal to cross their lines on the level. This point has been decided both in the case of a public railway(*a*) and also in that of a private railway laid across the highway by permission of the road authority(*b*). But it may now be taken as fairly certain, in view of four decisions of Committees in the session of 1903, that permission will not be given for the crossing of railways by electric tramways on the level, except under special circumstances; as, for instance, where the traffic on the railway is particularly light or not likely to interfere with or cause danger to the traffic on the tramway(*c*).

Reference may also be made to the cases cited on the same points in the discussion of the *locus standi* of tramway companies (*post*, pp. 40, 43).

It should be observed that in all cases of interference the rights of petitioners are not affected by the fact that they have previously opposed the scheme before the Board of Trade and obtained clauses for their own protection(*d*).

The right of a railway company to be heard against a proposed line over one of their bridges is founded on the injury threatened to the structure, and in no way depends on Standing Order 13 (see *post*, p. 387)(*e*). It is therefore necessary for the petitioners to allege such injury or the probability of it. A mere

(*z*) *North Eastern Metropolitan Tramways Bill* (1871), 2 Cl. & St. 167.

(*a*) *South London Tramways Bill* (1882), 3 Cl. & R. 224.

(*b*) *Tramways Orders (No. 2) (Pontypridd and Rhondda Valley) Bill* (1882), 3 Cl. & R. 241.

(*c*) *Newport Corporation Bill* (1903); *Leigh (Lancashire) Corporation Bill* (1903); *Ramsbottom (Lancashire) Urban District Council Bill* (1903); *Wellingborough and District Tramroads Bill* (1903). See, too, *post*, p. 405.

(*d*) *Tramways Orders (Bury and District) Bill* (1881), 3 Cl. & R. 101; *Tramways Orders (No. 2) (Pontypridd and Rhondda Valley) Bill*, *ub. sup.*

(*e*) See *North London Tramways Bill* (1870), 2 Cl. & St. 82.

Chap. II. allegation of the unsuitability of the bridge for the purpose, or of the mere "objections" of the petitioners to the scheme, is not sufficient to justify the allowance of a *locus standi* (*f*).

In an early case, not under the Tramways Act, the Midland Railway were refused a *locus standi* on a Bill for the conversion of a tramway into a railway, in which they desired a clause to be inserted declaring that they had running powers under an agreement over the line when so converted (*g*).

The *locus standi* of railway companies as frontagers is dealt with below under the head of "Frontagers" (p. 21).

II. Of Light Railways.

There is little authority at present with regard to the *locus standi* of light railways of either class. As regards Class A, it is suggested that the principles established above apply to them as much as to railways; and that perhaps, as far as the ground of competition is concerned, there is less objection to allowing them a *locus standi*, inasmuch as their functions approximate more closely to those of a tramway than do the functions of a railway proper. As regards Class B, they must be viewed, for purposes of *locus standi*, as tramways, and, as already stated, "tramways" in this dissertation may be taken to include light railways of Class B.

A general *locus standi* has even been allowed to a light railway company, which had been refused an Order and had made an application for another in a modified form, against a Bill which sought sanction for a practically identical scheme of electric tramways (*h*).

(*f*) *Woolwich and Plumstead Tramways Order Bill* (1880), 2 Cl. & R. 321.

(*g*) *Coleford Railway Bill* (1872), 2 Cl. & St. 277.

(*h*) *Bexhill and St. Leonards Tramroads Bill* (1899), 1 S. & A. 301.

This resembles a case of a water and gas Bill, against which the petitioners were given a *locus standi* on the condition of their obtaining a Provisional Order, which was then before the Board of Trade (*i*). As to *locus standi* in the matter of Light Railway Orders, see *post*, p. 45. Chap. II.

III. Of Frontagers.

By Standing Order 135, "The owner, lessee or occupier of any house, shop or warehouse in any street through which it is proposed to construct any tramway, and who alleges in any petition against a private Bill or Provisional Order that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the use or enjoyment of his premises or in the conduct of his trade or business, shall be entitled to be heard on such allegations before any Select Committee to which such private Bill or the Bill relating to such Provisional Order is referred."

It will be noticed that the term "frontagers" does not occur in the Standing Order, and in deciding who are to be admitted under its terms a rather liberal construction has been adopted. In a case before the making of the Order, the Great Eastern Railway Company had been allowed a *locus standi* in respect of their station at Shoreditch, which was situated at a distance of sixty yards from the road, its courtyard and approaches occupying the intervening space (*k*). The same principle has been generally followed in decisions under the Standing Order, as at Norwich, where the station was approached by a private roadway, the nearest building being 100 yards from the tramway (*l*); and in the case of the Waterloo terminus

(*i*) *Woking Water and Gas Bill* (1881), 3 Cl. & R. 114.

(*k*) *North Metropolitan Tramways Bill* (1871), 2 Cl. & St. 175; cf. *Dublin Tramways Bill* (1871), 2 Cl. & St. 142.

(*l*) *Norwich Tramways Bill* (1879), 2 Cl. & R. 210.

Chap. II. of the London and South Western Railway Company (*m*), of the same company's goods yard and premises at Nine Elms (*n*), and of certain warehouses of the South Eastern and Chatham Companies (*o*). The *access* to a "house, shop or warehouse" must therefore be regarded as being within the meaning of the Standing Order. Thus the tenant of a livery stable, the yard of which was approached by a gateway opening on to the road in question, has been admitted as being a frontager (*p*).

And the same principle was extended to the lessee and occupier of mews lying at some distance from the road, and approached by a passage which was alleged, but not proved, to be a public road (*q*). It is not necessary that the premises should actually abut, so long as the access is obstructed and the enjoyment of the premises thereby affected (*r*). Nor is it material that this access or approach should be the main entrance. Thus a railway company have been allowed a *locus* on the fact that a side approach for foot-passengers, leading to one of their platforms only, opened on to the road to be occupied by the tramway (*s*). And the occupiers of corner houses, the main entrances of which were on a side street, have been admitted to a hearing (*t*).

On the other hand, where the stations of a petitioning railway company were situated respectively at a distance of one-sixth and one-third of a mile from the

(*m*) *Tramways Orders (City of London and Metropolitan) Bill* (1881), 3 Cl. & R. 105; cf. *Paddington, St. John's Wood and Holborn Street Tramways Bill* (1871), 2 Cl. & St. 193.

(*n*) *South London Tramways Bill* (1882), 3 Cl. & R. 224.

(*o*) *London County Council (Tramways and Street Widening) Bill* (1901), 2 S. & A. 57.

(*p*) *Tramways Orders (London Street) Bill* (1874), 1 Cl. & R. 118.

(*q*) *North Metropolitan Tramways Bill* (1886), R. & M. 125.

(*r*) *Tramways Orders (No. 3) (London South District) Bill* (1882), 3 Cl. & R. 242.

(*s*) *Woolwich and Plumstead Tramways Order Bill* (1880), 2 Cl. & R. 321.

(*t*) *North Metropolitan Tramways Bill* (1886), *ub. sup.*

proposed tramway line, although the roads leading to them were private roads belonging to the petitioners, a *locus standi* was refused (*u*). The difference between this case and the preceding cases was, no doubt, one of degree, and the main consideration of the Court in each particular case will be how far the facility of approach to the petitioners' premises, whether public or private buildings or quasi-public establishments such as railway stations, is affected by the proposed tramway.

The cases above cited show that a very wide construction has been placed on the words "house, shop or warehouse," and there may be added to them a case where a *locus standi* was allowed in respect of the yard of a timber merchant which was entered from the road in question (*x*). It would therefore seem that premises of almost any description will entitle the owner, lessee or occupier to a hearing against a tramway Bill, if his access may be interfered with by the proposed tramway.

In a case already cited, the question was raised whether a frontager, whose frontage ended exactly abreast of the end of the proposed tramway, so that the tramway would not actually run in front of his premises at all, had a right to be heard under the Standing Order (*y*). In this case a *locus* was allowed, and except for the words "street *through* which," there is apparently nothing in the Standing Order to exclude this or any other case of a resident in a street only partly traversed by a tramway. Such an interpretation of the Order is also in accordance with the principle, to be noticed presently, which allows an ordinary frontager to deal with injury arising generally from the presence of the tramway in his street,

(*u*) *Dublin Tramways Bill* (1873), 1 Cl. & R. 13.

(*x*) *Tramways Orders (London Street) Bill* (1874), 1 Cl. & R. 118.

(*y*) *Brentford, Isleworth and Twickenham Tramways Bill* (1879), 2 Cl. & R. 140.

Chap. II. and does not confine him to annoyance or interference arising directly in front of his own premises.

Reference may here be usefully made to the cases on the meaning of "abutting" in note (s) to sect. 9 of Tramways Act, 1870. It seems reasonable to suppose that the word "street" in the Standing Order should be given a wide meaning. The injury which may be done to a frontager (and it is on the ground of injurious affection that the Standing Order permits him to be heard) may be just as great if his property is situated in a town or in a village, on a road where the houses are continuous or on a road where his house stands alone. In the cases before the Court of Referees in which the question has been dealt with, the Court has been inclined to inquire whether there has been any substantial injury, and, if there has been, to construe "street" loosely. In the Brentford case, a member of the Court remarked, "we must take street to include a road, I suppose" (z). Later, however, the *locus* of frontagers on that portion of a thoroughfare which lay within the metropolitan district was admitted, but the Court refused to grant a *locus* to those who fronted on the suburban portion of the same road, on the ground that there were only a hundred houses on a mile and a half of the latter portion. They suggested at the same time that a continuous line of suburban villas might constitute a street (a). This decision seems rather illogical, and it may now be regarded as superseded, for in a later case all the petitioners were allowed a *locus standi*, though that part of the thoroughfare on which some of them fronted was clearly not a "street" within the interpretation put upon the word in the Lea

(z) *Brentford, Isleworth and Twickenham Tramways Bill* (1879), 2 Cl. & R. 140.

(a) *Lea Bridge, Leyton and Walthamstow Tramways Bill* (1881), 3 Cl. & R. 71.

Bridge case(*b*). Again, a thoroughfare has been held to be a "street" within the meaning of the Standing Order, though there were houses on one side only(*c*); and, finally, the Court held that the Standing Order must be no longer regarded as confined to streets in towns, but applied it to twelve houses situate on a country road(*d*). The question, generally, is illustrated by the decisions on the meaning of the word "street" in Public Health Act, 1875, ss. 4, 150, 157, and in sect. 156 of the same Act, now repealed and replaced by Public Health (Building in Streets) Act, 1888, s. 3. In *Robinson v. Barton-Eccles Local Board* (1883), 8 A. C. 798; 53 L. J. Ch. 226, Lord Selborne, L. C., thought there should be buildings on each side of a thoroughfare if it were to be regarded as a "street." See also *Vestry of St. Giles, Camberwell v. Crystal Palace Co.*, (1892) 2 Q. B. 33; 61 L. J. Q. B. 802 (C. A.); *Davis v. Greenwich District Board of Works*, [1895] 2 Q. B. 219; 64 L. J. M. C. 257 (C. A.); and *Attorney-General v. Rufford*, [1899] 1 Ch. 537; 68 L. J. Ch. 179.

It was argued unsuccessfully in two early cases(*e*) that the Standing Order was not intended to protect persons who were bare owners of property on the proposed route, and that they must be treated as they would be in the case of a railway—that is to say, be granted a *locus* if any of their land was taken, but not otherwise. It seems clear, however, from the words of the Standing Order, that persons who merely receive the rack-rent are within it, provided that they are injuriously affected in the use or enjoyment of

(*b*) *Tramways Orders (No. 3) (London South District) Bill* (1882), 3 Cl. & R. 242.

(*c*) *Edinburgh Northern Tramways Bill* (1884), 3 Cl. & R. 397; compare *Simmonds v. Fulham Vestry*, (1900) 2 Q. B. 188; 69 L. J. Q. B. 560.

(*d*) *Tramways Orders (No. 2) (Somerton, Keinton-Mandeville and Castle Cary) Bill* (1893), R. & S. 310.

(*e*) *London Street Tramways Bill* (1870), 2 Cl. & St. 85; *Tramways Orders (No. 3) (Bury and District) Bill* (1881), 3 Cl. & R. 101.

Chap. II. their premises, for instance, in the amount of rent they may be able to obtain. But the words of the Standing Order, as was pointed out in the latter of the cases above cited, are "house, shop or warehouse," and, in the case of a bare owner, the Court would probably be inclined to construe the words more strictly than in the case of an occupier.

The word "lessees" now appears in the Standing Order, and the controversy is therefore closed as to whether non-resident lessees are entitled to a *locus standi*. It would be difficult, however, for a lessee who had sub-let the property for the whole of his term to make out his claim to be heard (*f*).

The admission of frontagers to a *locus standi* against extension of time Bills is reasonable in principle, and will be granted where the extension of time threatens any increase of injurious affection (*g*).

In the former of these cases a limited *locus standi* was allowed to frontagers against clauses authorising new works (such as construction of sidings and crossing-places), and also against clauses authorising the use of steam locomotive power. The right of frontagers to be heard against the introduction of steam on an existing line was admitted by the promoters in one case and granted by the Court in another (*h*).

A railway company has been refused a *locus* under the Standing Order against a Bill to authorise the use of electric power on an existing tramway, on the ground that the Standing Order "contemplates something to be done at the inception of a tramway, not some improvement of it after it has been constructed" (*i*). But doubt is thrown on this decision by recent cases where the *locus standi* of frontagers has

(*f*) *Tramways Orders (London Street) Bill* (1874), 1 Cl. & R. 118.

(*g*) *Edinburgh Street Tramways Bill* (1873), 1 Cl. & R. 16; *North Metropolitan Tramways Bill* (1874), 1 Cl. & R. 111.

(*h*) *North Metropolitan Tramways Bill* (1874), *ub. sup.*; *South Devon Railway Bill* (1874), 1 Cl. & R. 115.

(*i*) *Dublin Southern District Tramways Bill* (1893), R. & S. 242.

been granted or admitted under similar circumstances (*k*), and it is consonant with reason that frontagers should be heard on a Bill proposing a change which obviously may affect the value or convenience of their property very considerably.

By the words of the Standing Order the frontager's *locus standi* is expressly limited to his allegations, and his allegations are confined to the personal injury threatened to him in respect of his premises or business. With such a limited *locus* the petitioner is not, as a rule, at liberty to raise general objections to the policy of allowing tramways in streets. He is not, however, confined to the actual injury—by obstruction or what not—likely to arise immediately opposite his own premises, but he is free to deal with every annoyance or damage inflicted upon him by the presence of a tramway in his street, whether such annoyance or danger arises immediately opposite his own premises or not (*l*). But it will be for the Committee to determine in each case how much of their petition the petitioning frontagers will be allowed to bring forward (*m*).

The Standing Order confers a *locus* as of right upon those who come within its provisions. Frontagers, therefore, are not estopped from opposing a Tramways Orders Bill by the fact that they have assented

(*k*) *Greenock and Port Glasgow Tramways Bill* (1899), 1 S. & A. 324; *London County Council Tramways (No. 1) Bill* (1900), 2 S. & A. 21.

(*l*) *North Metropolitan Tramways (New Works, &c.) Bill* (1877), 2 Cl. & R. 56; *King's Cross and City Tramways Bill* (1878), 2 Cl. & R. 106; *Southwark and Deptford Tramways Bill* (1879), 2 Cl. & R. 225; *London Street Tramways Extensions Bill* (1882), 3 Cl. & R. 185; *London Tramways (Extensions) Bill* (1889), R. & M. 268. *London Street Tramways (Kensington, Westminster and City Lines) Bill* (1871), 2 Cl. & St. 188, must be regarded as no longer valid on this point; and *North Metropolitan Tramways Bill* (1871), 2 Cl. & St. 175, where a general *locus* was allowed, was disapproved of in *Paddington, St. John's Wood and Holborn Street Tramways Bill* (1871), 2 Cl. & St. 193.

(*m*) *London County Council (Tramways and Street Widening) Bill* (1901), 2 S. & A. 59.

Chap. II. to the scheme before the Board of Trade (*n*); nor will the Court take into consideration that provisions have been inserted by the Board of Trade for the petitioners' protection (*o*). On the same principle it is immaterial that the petitioners have previously petitioned the promoters in favour of the scheme (*p*). Again, it should be observed that the rights of frontagers, unlike those of "inhabitants" (see next page), exist independently of the action or abstention of the local authorities (*q*).

The Court will select from a number of petitioners those who are entitled to be heard under the Standing Order and grant them a *locus* (*r*).

The allegations inserted in a petition under this Standing Order must be of sufficient particularity to give the petitioner a title to a *locus standi* (*s*), but it is not necessary to use the precise terms of the Standing Order so long as the effect is sufficiently stated (*t*) and such interference is alleged as will justify a *locus standi* under the Standing Order (*u*). The *locus standi* of a petitioner has been disallowed because he—though in fact a frontager in respect of certain property—alleged injurious affection, not of this property, but of other property in respect to which he was not a frontager (*x*); and also where the petitioners did not allege that they would themselves be affected individually or collectively in the conduct of their trade

(*n*) *Tramways Orders (No. 2) (North-East Metropolitan) Bill* (1880), 2 Cl. & R. 316.

(*o*) *Tramways Orders (City of London and Metropolitan) Bill* (1881), 3 Cl. & R. 105.

(*p*) *Tramways Orders (London Street) Bill* (1874), 1 Cl. & R. 118.

(*q*) *Edinburgh Street Tramways Bill* (1873), 1 Cl. & R. 16; *Tramways Orders (North-East Metropolitan) Bill*, *ib. sup.*

(*r*) *Berhill and St. Leonards Tramroads Bill* (1899), 1 S. & A. 303.

(*s*) *North Metropolitan Tramways Bill* (1870), 2 Cl. & St. 89; *London Street Tramways Bill* (1871), 2 Cl. & St. 181.

(*t*) *Paddington, St. John's Wood and Holborn Street Tramways Bill* (1871), 2 Cl. & St. 193.

(*u*) *North Metropolitan Tramways Bill* (1871), 2 Cl. & St. 175.

(*x*) *Ayr Burgh Bill* (1899), 1 S. & A. 297.

or business, or that they lived and carried on business in any street through which the tramways would run (*y*). Chap. II.

The Court will permit the amendment of verbal errors in a petition (*z*).

IV. Of Inhabitants.

By Standing Order 134, "It shall be competent to the referees on private Bills to admit the petitioners, being the municipal or other authority having the local management of the metropolis or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a Bill, to be heard against such Bill, if they shall think fit."

Cases of petitions by inhabitants, as such, against tramway Bills are not very common.

It is the practice of the Referees to read the Standing Order distributively as between the local authorities and the inhabitants, so that if the former appear the latter are not allowed a *locus standi* (*a*). In a case before the passing of Tramways Act, 1870, 13,679 petitioners, who were ratepayers in the district through which tramways were proposed, and in many cases frontagers, and who all had a right to use the public streets over which the tramways were to run, were allowed a general *locus standi* (*b*). There is no special magic in the words "town or district" in the Standing Order, but a *locus* will only be granted to persons who inhabit the area affected by the proposed tramways. Such area may be regarded as extending beyond the termini of the tramways if there is, in fact, injurious affection (*c*). The fact that a tramway

(*y*) *Tramways Orders (No. 1) (Pontypridd Urban District Council) Bill* (1901), 2 S. & A. 84.

(*z*) *King's Cross and City Tramways Bill* (1878), 2 Cl. & R. 108.

(*a*) *Edinburgh Street Tramways Bill* (1873), 1 Cl. & R. 16.

(*b*) *Liverpool Tramways Bill* (1868), 1 Cl. & St. 142; 19 L. T. (N. S.) 55.

(*c*) *London Tramways (Extensions) Bill* (1889), R. & M. 268.

Chap. II. is intended to be only temporary does not affect the allowance of a *locus standi* (*d*).

The Court will decide on the merits of each case as to the right of any particular set of petitioners to appear as representatives of their district. A claim of sixty-seven residents, claiming a general *locus* as inhabitants in addition to their limited *locus* as frontagers, has been disallowed (*e*). Forty-four out of a population of 12,000 have been held to represent insufficiently the inhabitants at large in opposition to a Bill which might possibly involve the use of a local tramway by a railway company (*f*). A *locus* has been refused to persons representing a large rateable value who sought to be heard in order that they might raise the general question of the undertaking of electric tramways by county councils (*g*); and to 300 ratepayers who alleged improper motives on the part of a district council, which was in fact petitioning against the Bill (*h*).

V. Of Landowners.

There are certain cases which are worthy of notice as extending or modifying the principle that landowners whose land is to be taken for the purposes of an undertaking are entitled to a general *locus standi*. A general *locus standi* has been allowed to persons who were under agreement with the local authority to repair a sea-wall which protected the route of the proposed tramways (*i*). It was proposed to transfer a tramway undertaking to a new company, which would relay an old tramway previously removed from

(*d*) *Midland Railway Bill* (1880), 2 Cl. & R. 296.

(*e*) *Brentford, Isleworth and Twickenham Tramways Bill* (1879), 2 Cl. & R. 142.

(*f*) *Ryde and Newport Railway Bill* (1872), 2 Cl. & St. 298.

(*g*) *London United Tramways (Extensions) Bill* (1900), 2 S. & A. 21.

(*h*) *London United Tramways Bill* (1901), 2 S. & A. 64.

(*i*) *Edinburgh Northern Tramways Bill* (1884), 3 Cl. & R. 397.

a private street. The owners of the private street were refused a general *locus standi* against the Bill, but were allowed a *locus* against clauses authorising the use of mechanical power (*k*). A *locus standi* has been allowed to the owners of a portion of the soil, over which a tramway ran, against a clause authorising the conversion of the tramway into a railway (*l*). It appears that the ownership of property on both sides of the road, along which the tramway is to run, does not confer such ownership in the soil of the road as to justify the grant of a general landowner's *locus standi* (*m*). Where the owners of a church sought a *locus standi* against a Bill which included powers to erect a generating station, for which no part of their land was required, on the ground of possible nuisance and obstruction of light, for which they would be unable to obtain compensation, their application was, naturally enough, refused (*n*).

VI. Of Local Authorities.

The petition of local authorities is admitted, under Standing Order 134, referred to above, and under Standing Order 134 B, which runs: "It shall be competent to the referees on private Bills to admit the petitioners, being the council of any administrative county or county borough, the whole or any part of which is alleged to be injuriously affected by a Bill, to be heard against such Bill if they think fit." The rule is to limit their *locus standi* to such parts of a Bill as actually affect the district over which they have jurisdiction, but as to that district they are entitled to

(*k*) *Plymouth Tramways Bill* (1889), R. & M. 293.

(*l*) *North British Railway Bill* (1897), 1 S. & A. 199.

(*m*) *Tramways Orders* (No. 2) (*Somerton, Krinton-Mandeville and Castle Cary*) Bill (1893), R. & S. 310.

(*n*) *London County Council* (*Tramways and Street Widening*) Bill (1901), 2 S. & A. 58.

Chap. II. be heard on all questions, including the use of mechanical power (*o*). This rule has been applied in the case of Bills for the construction of tramways partly within and partly without the district (*p*), and in a case where a Bill for tramways situated wholly outside the district included powers to make an agreement for traffic facilities with the lessees of the local authority's tramways (*q*). On the same principle, under special circumstances, a local authority was refused a *locus standi* which they desired in order to insist on the compulsory widening of a bridge situated outside their district (*r*). In a recent case, a local authority was heard against a Bill for mechanical power in its entirety, though the tramway was situated in part outside their district, but this appears to have been by agreement (*s*).

Local authorities will be heard in respect of injurious affection of various kinds, as interference with gas and water-mains (*t*), or the introduction of steam power on an existing tramway (*u*), or the widening of the gauge of an existing tramway (*x*).

A comparison of the cases dealing with Bills for extension of time seems to show that a local authority will be given a *locus standi* if the Bill is likely to affect them (*y*). They may also have a *locus* against a Bill for

(*o*) *Accrington Corporation Tramways Bill* (1882), 3 Cl. & R. 117.

(*p*) *Vale of Clyde Tramways Bill* (1871), 2 Cl. & St. 137; *Glasgow, Bothwell, Hamilton and Wishaw Tramways Bill* (1872), 2 Cl. & St. 281; *Newcastle-upon-Tyne Improvement Bill* (1892), R. & S. 215.

(*q*) *Glasgow and Ibrox Tramway Bill* (1877), 2 Cl. & R. 12.

(*r*) *Rawmarsh Urban District Council (Tramways) Bill* (1900), 2 S. & A. 28.

(*s*) *Greenock and Port Glasgow Tramways Bill* (1899), 1 S. & A. 326.

(*t*) *Glasgow and Ibrox Tramway Bill*, *ub. sup.* (*locus* conceded by the promoters; whether it would have been granted, *quære*, see below, p. 35).

(*u*) *North London Tramways Bill* (1884), 3 Cl. & R. 450.

(*x*) *Ramsgate and Margate Tramways Bill* (1882), 3 Cl. & R. 199.

(*y*) *St. Helen's and District Tramways Bill* (1881), 3 Cl. & R. 94; *Ramsgate and Margate Tramways Bill* (1882), 3 Cl. & R. 199; *Great Northern Railway (Ireland) Bill* (1900), 2 S. & A. 9.

payment out of deposit money in respect of a certain portion of tramways which was to be abandoned (*z*). With regard to roads and bridges, a committee of county justices was allowed a *locus* in respect of interference with county bridges, but not in respect of main roads, in spite of their liability to contribute one-half of the cost of their maintenance (*a*). The County Council of Warwickshire was given a *locus* as being the authority having at the time control over main roads (*b*). Formerly a county council only had a *locus* in respect of the roads and bridges vested in them, and not under Standing Order 134b, when there were other local authorities to represent the public (*c*); but in 1901, Standing Order 134c was amended so as to read, "The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected . . . (*b*) by the provisions of any Bill proposing to authorise the construction or reconstruction of any tramway along any main road, or along any other road to the maintenance and repair of which the county council contributes, within the administrative county, shall be entitled to be heard against such Bill"; and this has been held to give the council a general *locus standi* against the Bill, and not only against such part of it as affects their county (*d*).

A county council may be heard in spite of a consent to the Bill given by its predecessors (*e*), and a local authority is not debarred by the fact that its consent has been dispensed with under the two-thirds rule of Standing Order 22 and sect. 5 of the Tramways Act, 1870 (*f*), nor by the fact that its jurisdiction is

(*z*) *Ramsgate and Margate Tramways Bill*, *ub. sup.*

(*a*) *Manchester, Bury and Rochdale Tramway (Extension) Bill* (1884), 3 Cl. & R. 427.

(*b*) *Marton, Southam and Stockton Tramroad Bill* (1889), R. & M. 280.

(*c*) *London United Tramways (Extensions) Bill* (1900), 2 S. & A. 21.

(*d*) *London United Tramways Bill* (1901), 2 S. & A. 63.

(*e*) *Marton, Southam and Stockton Tramroad Bill*, *ub. sup.*

(*f*) *Glasgow Corporation Tramways Bill* (1878), 2 Cl. & R. 95.

Chap. II. prospective and not actually in existence at the moment (*g*). But a statutory right to veto the construction of a tramway under a Provisional Order does not carry with it the right to a *locus* (*h*).

The allegation of injurious affection under Standing Order 134 must be clear, and a contention that the Provisional Order was *ultra vires* from want of consent ought to be raised on the second reading or committal of the Bill, and not in committee (*i*).

An important class of cases is connected with Bills dealing with powers to purchase or lease. A local authority has been given a general *locus standi* (with an immaterial exception) against a Bill seeking further powers, when its power of purchase under sect. 43 of the Tramways Act, 1870, was just about to arise (*j*). But no *locus standi* is given to a local authority against a Bill seeking powers to purchase or lease tramways within the district of the local authority if such powers are only to be exercised with its consent (*k*); it is otherwise if no such consent is to be required (*l*).

The Corporation of Edinburgh, having been conceded a *locus* against clauses providing for compulsory running powers over their lines, were also allowed a *locus* against clauses granting power to sell and lease the proposed tramways, on the ground that these clauses might involve the transfer of the compulsory running powers (*m*). But local authorities were refused a *locus* against clauses empowering a tramway company to lease to the Burnley Corporation the tramways situate in the districts of such local authorities, in case such local authorities did not

(*g*) *Commercial Road East (Tramways) Bill* (1871), 2 Cl. & St. 168.

(*h*) *Id. ib.*

(*i*) *Tramways Orders (No. 3) (Woolwich and South-East London) Bill* (1883), 3 Cl. & R. 360.

(*j*) *Edinburgh Street Tramways Bill* (1892), R. & S. 184.

(*k*) *Edinburgh Corporation Tramways Bill* (1893), R. & S. 254.

(*l*) *Edinburgh Improvement and Tramways Bill* (1896), 1 S. & A. 82.

(*m*) *Edinburgh Street Tramways Bill* (1896), 1 S. & A. 83.

purchase them under Tramways Act, 1870. The petitioners were held to be sufficiently protected by other provisions of the Bill (*n*). Chap. II.

VII. Of Gas and Water Companies.

It was held for some time that sect. 30 of Tramways Act, 1870, provided sufficient protection for gas and water companies, and that they were not entitled to a *locus standi* for the purpose of obtaining further protection (*o*), though in one case a very limited *locus standi* was granted to a water company by consent (*p*). This doctrine has been considerably modified. Soon after the above cases a *locus* was granted to two water companies against a clause authorising certain widenings, on the ground that it was doubtful whether sect. 30 afforded sufficient protection in such cases (*q*). A *locus* was allowed to water and gas companies against a clause authorising cable haulage, because such a mode of propulsion was not contemplated when sect. 30 was enacted (*r*).

A model clause was framed by a Joint Committee in 1893 for the purpose of meeting any injury caused by the use of electrical motive power; but it has been held, in the case both of water and gas companies, that a *locus standi* may be allowed against clauses authorising the use of mechanical power in spite of the insertion of this model clause in the Bill, and in spite of the protection afforded by the Tramways Act (*s*). But no doubt the Court will consider in each case

(*n*) *Burnley Corporation (Tramways, &c.) Bill* (1898), 1 S. & A. 232.

(*o*) *Lea Bridge, Leyton and Walthamstow Tramways Bill* (1881), 3 Cl. & R. 72.

(*p*) *North London Tramways Bill* (1884), 3 Cl. & R. 450.

(*q*) *Brentford and District Tramways Bill* (1885), R. & M. 6.

(*r*) *Edinburgh Street Tramways Bill* (1893), R. & S. 262; and compare *Tramways Orders* (No. 2) (*Bristol Tramways Extension*) *Bill* (1891), R. & S. 160.

(*s*) *Kidderminster and Stourport Electric Tramways Bill* (1896), 1 S. & A. 108 (gas); *St. Helens Corporation Bill* (1898), 1 S. & A. 282 (water).

Chap. II. whether the clause and Act do in fact provide sufficient protection, and, if so, a *locus* may be refused (*t*) or granted (*u*) accordingly. The possibility that the powers sought by a Bill will involve an increase of the rate of speed, and consequently of vibration, is not sufficient to give a gas company a *locus standi* (*x*).

VIII. Of Telephone Companies.

A telephone company will be granted a *locus* against a Bill seeking authority for the use of mechanical (which may include electrical) power for the purpose of obtaining the insertion of protective clauses, if the usual model clauses have not already been inserted (*y*), but not, as a rule, if they have (*z*). In cases where the telephone company has not opposed the original authorisation of mechanical power, owing to the defective state in which scientific knowledge was at the time, they have been allowed to appear in order to obtain protective clauses in subsequent Bills dealing with the tramways in question, though such Bills merely sought extension of time, power to transfer tramways to a corporation, or power for a corporation to work tramways (*a*).

IX. Of Omnibus and Cab Proprietors.

It is only reasonable that omnibus proprietors should be allowed a *locus standi* against tramway Bills. Tram-

(*t*) *Airdrie and Coatbridge Tramways Bill* (1900), 2 S. & A. 3.

(*u*) *London United Tramways Bill* (1901), 2 S. & A. 60.

(*x*) *Dublin Southern District Tramways Bill* (1898), 1 S. & A. 240.

(*y*) *Barry Railway Bill* (1893), R. & S. 242; *Widnes and Runcorn Bridge Bill* (1900), 2 S. & A. 34.

(*z*) *London United Tramways Bill* (1901), 2 S. & A. 62; *Worcester Tramways Bill* (1901), 2 S. & A. 86.

(*a*) *Folkestone, Sandgate and Hythe Tramways Bill* (1891), R. & S. 102; *Blackpool Improvement Bill* (1892), R. & S. 167; *Leeds Corporation (Consolidation and Improvement) Bill* (1893), R. & S. 281.

ways not only introduce a serious element of competition against omnibuses, but obviously cause them considerable inconvenience by occupying the choicest portion of the roadway. The proprietors of omnibuses, then, clearly have an interest distinct from and not represented by any other person or authority who uses or has power over the roadway. The Referees have recognized their right to a *locus* in several cases both before and after Tramways Act, 1870 (*b*). And the same principle has now been extended and applied to Bills for the conversion of horse tramways into electric tramways, on the ground that competition may be thereby increased (*c*). But a possible future increase of competition due to the working of tramways by a corporation has been held not to be a ground for granting a *locus standi* to omnibus proprietors against a Bill by which powers for such working were sought (*d*).

It has been held, in the only case on the subject, that cab proprietors are, unlike omnibus proprietors, not entitled to a *locus standi*, but the logic of this decision seems open to question, though no doubt the competition in their case is less tangible (*e*).

X. Of Miscellaneous Petitioners.

The trustees of a market usually held in A. Street, who had powers to station the market carts in B. Street if A. Street were not available for any reason, were allowed a *locus standi* against Bills for tramways along A. Street and B. Street respectively, and the salesmen who made their living by the market, and the lord of

(*b*) *Liverpool Tramways Bill* (1868), 1 Cl. & St. 120; 19 L. T. (N. S.) 55; *London Street Tramways Bill* (1870), 2 Cl. & St. 87; *Edinburgh Street Tramways Bill* (1871), 2 Cl. & St. 130; *Woolwich and Plumstead Tramways Order Bill* (1880), 2 Cl. & R. 321.

(*c*) *London County Council Tramways (No. 1) Bill* (1900), 2 S. & A. 19.

(*d*) *Birkenhead Corporation Bill* (1897), 1 S. & A. 148.

(*e*) *Woolwich and Plumstead Tramways Order Bill*, *ub. sup.*

Chap. II. the manor, who was interested in the tolls and owned the soil of A. Street, were allowed a *locus standi* against the proposed tramway along A. Street, in addition to the local street authorities (*f*). The lessee of a market abutting on the proposed route, who had a right to station market carts in the street, was given a *locus standi* as possessing interests of a special and exceptional kind which were substantially affected by the Bill (*g*).

The owners of a sea-wall which supported the proposed route were given a general *locus standi* in addition to the local road authority, with whom they had made an agreement for the upkeep of the wall, as having a distinct interest (*h*).

A householder on the line of route will not be allowed to appear against an extension of time Bill on the ground that he has been inconvenienced and his expectations have been disappointed by the non-completion of the tramway (*i*).

Under special circumstances ratepayers and traders on the route were refused a *locus standi* against an amalgamation Bill, but the case is of little value as a precedent, the ground of refusal being that an existing lease had already had the effect of amalgamating the tramways for all practical purposes, and the proposed Bill, therefore, did not affect the status of the petitioners (*k*).

With regard to dissentient shareholders, it has been decided that Standing Orders 131 and 132 (*post*, p. 403) must be construed as giving separate grounds of *locus standi*. A shareholder may appear either if he has a distinct interest or if he attends the Wharnccliffe meet-

(*f*) *North Metropolitan Tramways Bill* (1870), 2 Cl. & St. 90; *Commercial Road East (Tramways) Bill* (1871), 2 Cl. & St. 168.

(*g*) *North Metropolitan Tramways Bill* (1886), R. & M. 122. (Standing Order 135 had at that time not been amended so as to include lessees.)

(*h*) *Edinburgh Northern Tramways Bill* (1884), 3 Cl. & R. 397.

(*i*) *Great Northern Railway (Ireland) Bill* (1900), 2 S. & A. 10.

(*k*) *Dublin United Tramways Co. Bill* (1881), 3 Cl. & R. 38.

ing and dissents, and only one of these qualifications is necessary, not both (*l*). But the Wharncliffe meeting, if dissent at it is to qualify a shareholder under Standing Order 132, must be a proper one; it is not enough that it is declared to be held in pursuance of the Standing Orders, if it is not a Wharncliffe meeting in fact (*m*).

In conclusion, it may be noted that the fact that a proposed tramway is intended to be only temporary does not affect the question of *locus standi* (*n*).

B. *Locus Standi of Tramways.*

I. Against Tramway Bills.

The Court of Referees treats the proprietors of a tramway as not merely possessing an easement over a public way, but as having acquired rights, on the faith of which they have expended money, analogous to those of a railway company, and consequently as entitled to be heard in a proper case against other persons who apply for similar or identical privileges (*o*). But the interest of the petitioners in the tramway, in respect of which they petition, must be already vested (*p*). In one case beneficial assignees of a tramway lease were given a *locus* as well as the lessees, though such an assignment is unknown to Tramways Act, 1870 (*q*). Competition is the most obvious ground for a petition, but the Court will not allow a *locus* unless the alleged competition is shown

(*l*) *Liverpool Tramways Bill* (1880), 2 Cl. & R. 273; *South Staffordshire Tramway Bill* (1899), 1 S. & A. 340.

(*m*) *Edinburgh Corporation Bill* (1897), 1 S. & A. 161.

(*n*) *Midland Railway Bill* (1880), 2 Cl. & R. 296.

(*o*) *Tramways Orders (No. 2) (North-East Metropolitan) Bill* (1880), 2 Cl. & R. 317.

(*p*) *Liverpool Tramways Bill* (1880), 2 Cl. & R. 270.

(*q*) *Edinburgh Street Tramways Bill* (1896), 1 S. & A. 84.

Chap. II. to be substantial(*r*). The liquidator of a tramway company then being wound up was refused a *locus* against a Bill for a tramway over part of the same route, on the ground that there could be no competition(*s*). Physical interference of whatever kind is sufficient to justify a *locus* against so much of the Bill as authorises such interference, but not against the whole Bill, as is the case with railways under Standing Order 133(*t*). The interference which justifies a *locus* may take place in many ways, *e.g.*, by level crossings, junctions, alteration of gauge or introduction of electric power, which may affect communication with a neighbouring tramway or running powers(*u*), but it must be actually contemplated in the proposed scheme; it is not sufficient to allege that the line cannot be laid without it, where no power is sought to authorise it(*x*). Similarly a *locus* has been refused in respect of an interference which it was alleged would arise from a proposed junction with a third tramway, the construction of which was not yet authorised(*y*).

The proprietors of lines outside a borough, whose proposals to enter the borough had been rejected by Parliament on the opposition of the corporation, were not allowed a *locus standi* against the corporation's Bill for tramways within the borough, their object being to bind the corporation to construct within twelve months instead of the statutory two years, and to fix reasonable rates of user, to be applied if the peti-

(*r*) *Lausdorne Road, Rathmines and Rathgar Tramway Bill* (1879), 2 Cl. & R. 177; *Lea Bridge, Leyton and Walthamstow Tramways Bill* (1881), 3 Cl. & R. 71.

(*s*) *Brentford and District Tramways Bill* (1885), R. & M. 5.

(*t*) *Lausdorne Road, Rathmines and Rathgar Bill*, *ub. sup.*

(*u*) *Id. ib.*; *Coleford Railway Bill* (1872), 2 Cl. & St. 278; *Tramways Orders (No. 3) (City of London and Metropolitan) Bill* (1881), 3 Cl. & R. 105; *Salford Corporation Bill* (1897), 1 S. & A. 219; *Burnley Corporation (Tramways, &c.) Bill* (1898), 1 S. & A. 235.

(*x*) *Lea Bridge, Leyton and Walthamstow Tramways Bill* (1881), 3 Cl. & R. 71.

(*y*) *Tramways Orders (No. 2) (City of London and Metropolitan) Bill* (1881), 3 Cl. & R. 105.

tioners ultimately had to work the tramways when constructed (z). Chap. II.

A special branch of this portion of the subject concerns the *locus standi* of tramways against clauses authorising the purchase, leasing or working of tramways by a local authority.

A *locus standi* has been granted to the proprietors of tramways in physical connection with the tramways of a corporation against clauses authorising the corporation to lease their tramways without obtaining the consent of the Board of Trade under Tramways Act, 1870, s. 19, on the ground that, if such consent were dispensed with, the lease might not contain fair terms as to through traffic; and against a clause which would permit the corporation to work their tramways without the safeguards provided by Standing Order 171 (a). But a *locus standi* will not be given against clauses authorising the purchase of the petitioners' tramways with the consent of the petitioners (b), nor against clauses which, while permitting the local authority to work their tramways by electricity, do not confer on them any more power to work them themselves than they had before (if they had any) (c).

Clauses conferring powers of working on a corporation after the termination of a current lease will not justify the grant of a *locus standi* to the lessees against such clauses, even though such powers will seriously affect the lessees by extinguishing the probability of their obtaining the renewal of their lease (d), or by leaving them with a quantity of useless plant on their hands (e). On the principle of the Salford case, cited above, the *locus standi* of a tramway company owning

(z) *Tramways Orders (No. 3) (Birmingham Corporation) Bill* (1872), 2 Cl. & St. 290.

(a) *Edinburgh Corporation Tramways Bill* (1893), R. & S. 250; *Edinburgh Improvement and Tramways Bill* (1896), 1 S. & A. 80.

(b) *Edinburgh Corporation Tramways Bill*, *ib. sup.*

(c) *Edinburgh Improvement and Tramways Bill*, *ib. sup.*

(d) *Salford Corporation Bill* (1897), 1 S. & A. 219.

(e) *Birkenhead Corporation Bill* (1897), 1 S. & A. 150.

Chap. II. and working tramways in the districts of several local authorities has been disallowed against clauses, by which one of the local authorities took power to work the tramways in their own district after purchase and to lease the tramways in any of the other districts if they were not purchased by the local authorities of those districts. The contention of the petitioners was that these clauses destroyed the practical certainty that their tramways would be leased back to them by the various local authorities after purchase (*f*). But the two cases last referred to were distinguished, and a *locus standi* was granted to a tramway against a scheduled agreement, which provided for the exercise of the option to purchase by a local authority at once and before the expiration of the time fixed by Tramways Act, 1870, s. 43, and also against such clauses as would enable the petitioners to raise the point whether there were such special local circumstances as would justify the committee in permitting the local authority to purchase tramways not in connection with their own under Standing Order 170A (*g*).

II. Against Railway Bills.

It was laid down generally in an early case that, there being no provisions for the protection of tramways in the general railway Acts, a tramway company was entitled to show that a railway Bill would inflict such great injury on them that it ought to be rejected (*h*). We have here the converse of the *locus standi* of railways against tramway Bills, and doubtless the same principles, so far as they are appropriate, will apply. With regard to competition, the Court refused to decide the abstract question as to whether

(*f*) *Bury Corporation (Tramways, &c.) Bill* (1898), 1 S. & A. 235; followed in *Bury Corporation Bill* (1899), 1 S. & A. 303.

(*g*) *Glasgow Corporation Tramways Bill* (1899), 1 S. & A. 318.

(*h*) *Dublin Central Station Railway Bill* (1872), 2 Cl. & St. 283.

there could be competition between railways and tramways worked by steam power, but on the merits allowed a steam tramway to appear against a railway intended to run parallel with it and serve to some extent the same district (*i*). Against a subway through which cars were to be run by a stationary engine and an endless cable, and which might have been regarded either as a tramway or as a railway, both the lessees of a corporation who worked a horse tramway and the corporation themselves as reversioners were allowed a general *locus standi* on the ground of competition (*k*). A tramway company, which had statutory power to own omnibuses, but had never owned them, was allowed to be heard against a clause authorising a railway company to provide vehicles for passengers and goods in connection with or in extension of their railway system (*l*).

There are the following instances of a limited *locus standi* granted or admitted in respect of physical interference: against a clause involving the raising of a road on which the petitioners' tramway was laid (*m*); against clauses authorising a junction and running powers (*n*); and against general physical interference (*o*). But no *locus standi* was allowed to a tramway company against a Bill authorising the removal of restrictions whereby the construction of a railway, which would physically interfere with the tramway, would be accelerated (*p*).

(*i*) *Goole, Epworth and Ouseval Railway Bill* (1883), 3 Cl. & R. 285. A *locus* was allowed later on in a similar but much weaker case: *Sutton and Willoughby Railway Bill* (1884), 3 Cl. & R. 471.

(*k*) *Glasgow Subway Bill* (1887), R. & M. 151, 154.

(*l*) *Belfast and Northern Counties Railway Bill* (1899), 1 S. & A. 298.

(*m*) *South Eastern Railway (Various Powers) Bill* (1885), R. & M. 65 (owners).

(*n*) *Mumbles Railway and Pier Bill* (1889), R. & M. 285 (lessees).

(*o*) *Glasgow Subway Bill* (1887), R. & M. 151, 154 (lessees and reversioners).

(*p*) *Metropolitan and Metropolitan District Railways (City Lines and Extensions) Bill* (1880), 2 Cl. & R. 292.

Chap. II.

A general *locus* has been refused to the lessees of a tramway whose lease was terminable on notice and in various events, one of which was the construction of the proposed railway (*q*), but allowed to one of the two undertakers named in a Provisional Order authorising a tramway for which the proposed railway would be, in fact, substituted, though it was not clear that the other undertaker, who owned the necessary land, was prepared to allow it to be used for the tramway (*r*).

III. Against other Bills.

A *locus standi* will not be allowed to a tramway against a Bill to authorise a sewerage scheme, on the ground of interference, if the promoters are the road authority who have powers under Public Health Act, 1875, and subject to whose rights the tramway is constructed (*s*); but it is otherwise when the promoters are not such road authority (*t*).

In cases where there has been doubt how far the rights of a tramway company would be affected by clauses authorising the extension of a borough boundary, the company* has been given a *locus standi* against those clauses (*u*).

A railway company, owning and working a tram line, have been allowed a general landowners' *locus standi* against a Bill authorising a local authority (*inter alia*) to acquire and free from tolls certain roads crossed on the level by the tram line (*x*).

In the case of clauses whereby a corporation sought power to lease a ferry, which they were already entitled to purchase by agreement, the Court refused

(*q*) *Mumbles Railway and Pier Bill* (1889), *ub. sup.*

(*r*) *Ipswich and Felixstowe Railway and Pier Bill* (1874), 1 Cl. & R. 84.

(*s*) *West Ham Local Board Bill* (1881), 3 Cl. & R. 113.

(*t*) *Edinburgh Extension and Sewerage Bill* (1885), R. & M. 23.

(*u*) *Bury Improvement Bill* (1885), R. & M. 9; *Edinburgh Extension and Sewerage Bill* (1885), *ub. sup.*

(*x*) *West Ham Local Board Bill* (1884), 3 Cl. & R. 481.

to allow a tramway company to rely upon another Bill for the purchase of two other ferries, which was not yet before the Court, in order to establish a *locus standi* on the ground of competition; but against the second Bill, when it came before them, they allowed the company a competitive *locus*, since the ferries to be acquired by the two Bills were situate along the route of the tramways, and the corporation would not pledge themselves not to run boats from ferry to ferry (*y*).

C. *Locus Standi on Applications for Light Railway Orders.*

By Light Railways Act, 1896, s. 7 (3), the Commissioners shall give full opportunity for any objections to the application to be laid before them, and shall consider all such objections, whether made formally or informally, and sect. 22 specially provides for objections based on interference with historical objects or natural scenery. These provisions are wide enough to cover any conceivable sort of objection, and so it appears that any conceivable sort of objector has a right to be heard by the Commissioners, or to submit his objections in any way he chooses. Again, by sect. 9 (1), the Board of Trade shall consider any Order with special reference to any objection lodged with them in accordance with the Act (*i.e.*, in accordance with sect. 8 (2)). There seems to be nothing here to limit objectors or objections before the Board of Trade to those appearing or made before the Commissioners, and in fact there are instances of objectors appearing for the first time when the Order had reached the Board of Trade (*e.g.*, in the *Liverpool and Prescott Case*) (*yy*). Rule 7 of the Light Railway Rules of 1898, however, says that any objection to an

(*y*) *Birkenhead Corporation Bill* (1897), 1 S. & A. 148; *Birkenhead Corporation (Ferries) Bill* (1897), 1 S. & A. 152.

(*yy*) (1898), Rep. IV. 14, Oxley, 180.

Chap. II. application made to the Commissioners should be in writing and a copy should be sent to the promoters; but in face of the Act this cannot be regarded as imperative. Every kind of objector with every kind of objection has, in fact, been heard by the Commissioners and the Board of Trade, and *locus standi* has only been disallowed where the objector clearly had no interest (*e.g.*, in the *Bere Alston and Calstock Case*)(*z*). The Board of Trade, however, seem to have had doubts whether the promoters of an Order have a right to appear against it before the Board of Trade (*Cranbrook, Tenterden and Ashford Case*)(*a*); and until the *Coutbridge and Airdrie Case* (*b*), it was the practice of the Commissioners not to hear evidence as to objections on the ground of competition, but merely to make a note of them for submission to the Board of Trade (*c*). It would appear that competition may be alleged against an Order, though it be of such a kind as would not justify a *locus standi* under the cases cited on pp. 14 *sqq.* (*Coutbridge and Airdrie Case*)(*b*). The following list of persons who have been heard will give an idea of the comprehensiveness of the Commissioners and the Board of Trade: railway companies (on all sorts of grounds); local authorities of every kind, including parish councils; residents (of whom in one case the Commissioners ordered a poll to be taken); landowners; promoters; intending promoters; frontagers; omnibus proprietors; tradesmen's associations; water, gas, telephone and electric lighting companies; the Ecclesiastical Commissioners; the Crown (in respect of the rights of the Secretary of State for War and of the Commissioners of Woods and Forests, and generally); the Com-

(*z*) (1899), Rep. VI. 4, Oxley, 102.

(*a*) (1899), Rep. V. 11, Oxley, 84.

(*b*) (1898), Rep. III. 30, Oxley, 149.

(*c*) See notes (*y*) to sect. 7 and (*i*) to sect. 9 of Light Railways Act, 1896.

mons Preservation Society; and the National Trust Chap. II.
for the Preservation of Places of Natural Beauty.

D. *Locus Standi on Applications for Scots Provisional Orders.*

Under Private Legislation Procedure (Scotland) Act, 1899 (63 & 64 Viet. c. 47), if the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons report that a Provisional Order applied for under that Act may proceed, the Secretary for Scotland orders an inquiry, if there is opposition or if he thinks an inquiry otherwise necessary, and this inquiry is held before Commissioners appointed under the Act. By sect. 6 (2), "Commissioners shall hear and determine any question of *locus standi*, but they shall not sustain the *locus standi* of any person who has not in the prescribed manner and within the prescribed time objected to the proposed Order, unless on special grounds established to the satisfaction of the Commissioners, and subject to such conditions as to payment of costs or otherwise as the Commissioners may determine." Sect. 17 provides that any objection made on the ground that the undertaking proposed to be authorised will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery, shall be considered by the Secretary for Scotland, and may be referred by him to the Commissioners, who shall give to those by whom it is made a proper opportunity of being heard in support of it. The Provisional Order, if approved by the Commissioners, is confirmed by Act in the usual way; but by sect. 9 (1), an opposed Confirmation Bill may be referred on the motion of a member to a Joint Committee, and the Joint Committee shall hear and determine any question of *locus standi*.

At the first sitting of Commissioners the chairman
stated that the procedure to be adopted would be

Chap. II. practically that of House of Lords Committees on Private Bills, both as regards the question of *locus standi* and in other respects(*e*). No *locus standi*, however, will be allowed to objectors who have not complied with sect. 6 (2) and the General Orders made under sect. 15, unless they produce some valid excuse(*f*). The Commissioners refused to regard as a valid excuse the plea that a much longer time was allowed for petitioning before the Committees of Parliament, and that the only means which the petitioners (who were landowners) had of knowing of the proposed scheme was provided by the advertisements, as no notices were served on them(*g*).

A railway company has been allowed a *locus* on the ground of competition against an Order to authorise electric tramways, though the committee sought to limit the *locus* in some way so as to prevent the company from raising questions as to the feasibility or desirability of the scheme(*h*). A *locus* has also been allowed to a railway company against a clause to authorise a tramway company to run motor cars in connection with and in prolongation of their tramway route, and to carry on a parcel delivery by means of motor cars(*i*).

(*e*) *Highland Railway Co.* (1901), 38 S. L. R. 860.

(*f*) See *Arizona Copper Co., Ltd.* (1901), 38 S. L. R. 862.

(*g*) *Glasgow Corporation (Tramways and General)* (1901), 38 S. L. R. 865.

(*h*) *Aberdeen Suburban Tramways* (1902), 39 S. L. R. 872.

(*i*) *Glenock and Port Glasgow Tramways Extension* (1902), 39 S. L. R. 880.

CHAPTER III.

THE RATING OF TRAMWAYS AND LIGHT RAILWAYS.

I. Rateability.

LIGHT railways of Class A—that is to say, light railways which are constructed with a track of their own, and not along a public thoroughfare—will be subject, to speak generally, to the ordinary principles of railway rating. There may, however, be two things which will differentiate them from railways for rating purposes: (i) The existence of a special provision in the Order limiting their assessment in any parish to that at which the land occupied by them was assessed before they were constructed, under Light Railways Act, 1896, s. 5 (1c). (ii) Their employment of a central power station, or central power stations, in lieu of locomotive engines, whereby the incidence of rating as between one parish and another may be affected.

Tramways, however, and light railways of Class B—that is to say, those which wholly or mainly traverse public thoroughfares—require special consideration. But in the course of such consideration it would be unsatisfactory to attempt to discuss at large the elaborate subject of railway rating, with which the rating of tramways stands in close connection (*a*). It must suffice to allude to it only to the extent to which it is directly involved in, and throws light on the question how tramways and light railways on public thoroughfares are to be rated.

(*a*) See *London Tramways Co., Ltd. v. Lambeth* (1874), 31 L. T. 319.

Chap. III.

What follows must be taken to apply alike to tramways and light railways of Class B, subject in the case of the latter to any special provisions made under sect. 5 (1c), referred to above.

That tramways are rateable to the poor in respect of their occupation of the public thoroughfare was first established in England by *Pimlico, Peckham and Greenwich Street Tramway Co. v. Greenwich Union* (b). That case proceeded upon two principles: (i) That the promoters occupy a portion of the thoroughfare by the rails, which they lay down, and which remain their property. The analogy of gas and water companies, who are rated in respect of their subterranean pipes, which are their property, but which confer on them no ownership of the soil, was held by the Court to be exactly applicable to the case (c). (ii) That, while the public and the local and road authorities preserve their rights over the road, the promoters have the exclusive user and occupation of the rails for the purpose for which they were laid down, namely, the running of carriages with flanged or other wheels suitable only to run on such rails (cc). The case of the promoters of a tramway, therefore, is different from that of the defendant in *R. v. Jolliffe* (d), who had only a non-exclusive user of a way-leave over the land of others on payment of tolls; but it is closely analogous to that of the defendants in *R. v. Bell* (e). They, by virtue of a lease, laid waggon-ways over the ground of others, and excluded all other persons from using them.

Pimlico, Peckham and Greenwich Street Tramway Co. v. Greenwich Union has now been approved by the

(b) (1873), L. R. 9 Q. B. 9; 43 L. J. M. C. 29.

(c) See *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; 28 L. J. M. C. 135; *R. v. Cambridge Gas Light Co.* (1838), 8 A. & E. 73; 7 L. J. M. C. 50.

(cc) See cases in note (b) to sect. 34 of Tramways Act, 1870.

(d) (1787), 2 T. R. 90.

(e) (1798), 7 T. R. 598.

Judicial Committee in *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation* (*f*), a case arising under the law of the State of Victoria, which, however, for the present purpose, may be taken to be the same as that of England (*g*). The Board there says (*h*): "It is true that the company has not acquired any right other than that of user of the roads on which it lays its tramway, and that the rate is leviable on nothing but the use of the tramway. But their Lordships do not find in these provisions any intention of a departure from the principles of municipal rating established alike in England and in Victoria. The use of the tramway is the occupation of the tramway. The position of the Pimlico Tramway Company resembles that of the present appellant. The enactments defining the position of the two companies are almost identical. The Pimlico Company was held to be an occupier, rateable as such, and not the less so because its occupation was restricted to a particular purpose, nor because the public also had rights over the same ground. Their Lordships agree with the Supreme Court that this company is subject to ordinary municipal rates." If the rate were assessed on land and not on occupation, of course the promoters would not be rateable in respect of their user of the thoroughfare (*i*).

In Scotland the rateability of tramways was established by *Craig v. Edinburgh Street Tramways Co.* (*j*). The Court held that the tramways were lands and heritages in the sense of Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), s. 1, and that the company were owners as being persons who were "in the actual

(*f*) [1901] A. C. 153; 70 L. J. P. C. 1.

(*g*) See *In re Horwitz* (1901), 26 Vict. L. R. 500.

(*h*) At pp. (L. R.) 169, (L. J.) 7.

(*i*) *Toronto Street Railway Co. v. Fleming* (1875), 37 Upp. Can. R. 116 (C. A.); cf. *Chelesa Waterworks Co. v. Bowley* (1851), 17 Q. B. 358; 20 L. J. Q. B. 520.

(*j*) (1874), 1 R. 947.

Chap. III. receipt of the rents and profits of lands and heritages." They seem to have found some little difficulty in the occurrence of the word "user" in sect. 57 of Tramways Act, 1870, but, like the English Court, applied the analogy of water pipes (*k*).

The question of rateability in respect of a limited occupation was further considered in *Holywell Union v. Halkyn District Mines Drainage Co.* (*l*), where persons who had an exclusive right of drainage through a tunnel were held to be rateable in respect of it, though the owner reserved to himself rights, expressly subordinate to the aforesaid right, to run a tramway through the tunnel and to do other things. Thus here, as in the case of a tramway on a thoroughfare, the rights, which were held to be rateable, were, though limited in extent, exclusive within such limits. Exclusive occupation, as Lord Davey points out, does not mean that nobody else has any rights in the premises. The question is whether or not a person has a paramount occupation of some kind, however limited. If a person has only a subordinate occupation, subject at all times to the control and regulation of another, he has not a rateable occupation. But if there is a paramount occupation of some kind, then the nature of it and the tenure on which it rests need not be considered.

A particular aspect of the question of occupation is concerned with the grant of running powers. Whether the possession of running powers will render the possessor rateable as occupier of the line, over which such powers have been granted to him, will depend, in the case of a tramway as of a railway, on the nature of the control exercised by such possessor over the line in each case. Thus, in *Sutton Harbour Improvement Co. v. Plymouth Guardians* (*m*), the appellants had

(*k*) As to which, see *Edinburgh Water Co. v. Hay* (1854), 1 Macq. 682.

(*l*) [1895] A. C. 117; 64 L. J. M. C. 113.

(*m*) (1890), 63 L. T. 772; 55 J. P. 232.

constructed and paid for a tramway on their own soil, but by agreement with a railway company handed it over to be exclusively worked, controlled, managed and maintained by the latter. The appellants, however, retained the right to land goods on and across the tramway. It was held that the circumstances were very similar to those of an ordinary tramway on a thoroughfare, and that the railway company were the occupiers of the tramway. On the other hand, in *Midland Railway Co. v. Badgworth Overseers* (n), the portion of the railway track situate in the material parish was repaired and staffed by Company A, and Company B had running powers over it. There were three rails, comprising both broad and narrow gauge; Company A alone used one rail, Company B alone another, and both companies the third. It was held that Company B was not rateable. It might have been supposed that Company B was rateable in respect of the rail which it alone used. But this rail was repaired by Company A just as much as the others were, and there was nothing to prevent Company A using it as well, if it built itself suitable rolling stock.

Similarly, two cases, in each of which there was practically a lease in perpetuity, may be contrasted, the owner in the former case being held rateable, in the latter not—viz., *Leeds, Bradford and Halifax Railway Co. v. Armley Overseers* (o) and *North and South Western Junction Railway Co. v. Brentford Union* (p).

These principles may be easily applied to ordinary tramways and light railways. Lessees of a public authority, which had itself no right to work a tramway, would doubtless be rateable in almost all cases, subject to special terms in their lease. The rateability of other lessees would depend on the terms of their

(n) (1864), 34 L. J. M. C. 25.

(o) (1861), 25 J. P. 711.

(p) (1887), 18 Q. B. D. 740; 56 L. J. M. C. 101; affirmed 13 A. C. 592; 58 L. J. M. C. 95.

Chap. III. lease, particularly on its provisions with regard to repairs (repairs not being cast on lessees by the general Acts), inasmuch as the incidence of the duty to repair obviously goes far to determine the question of occupation. Where the line, over which running powers have been granted, forms part of a system and power is supplied from a central station, the possessor of running powers paying so much per car-mile or otherwise for the privilege, it would probably be held, to speak generally, that the owner retained the control of the line. Licensees, by the terms of Tramways Act, 1870, s. 35, and on general principles, could scarcely be rateable occupiers.

It is customary to say that an occupier, if he is to be rateable, must have not only an occupation, but a "beneficial occupation." This last expression is deceptive; it would naturally be taken to mean beneficial to the particular occupier, or at least profitable in general. It may now be regarded as settled that it does not mean this. It is only necessary that the occupation should be of value. "It is not to be denied but (*sic*) that this phrase 'beneficial occupation' has been in frequent use; and, generally speaking, it serves tolerably well to convey rather a popular notion than to give a certain rule for deciding the question of rateability in every instance. Because, if by beneficial be meant *profitable*, or anything like it, the expression is obviously fallacious" (*q*). " 'Occupation,' to be rateable, must be of property yielding, or capable of yielding, a net annual value, that is to say, a clear rent over and above the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the property in a state to command such rent. It is in this sense

(*q*) Per Lord Denman, C. J., in *Bristol Governors of the Poor v. Wait* (1836), 5 A. & E. 1; 5 L. J. (N. S.) M. C. 113; adopted by Lord Herschell, L. C., in *London County Council v. Erith Overseers*, [1893] A. C. 562; 63 L. J. M. C. 9.

that I understand the words ‘beneficial occupation,’ Chap. III. whenever it is said that to support a rate the occupation must be a beneficial one. For, on principle, it is by no means necessary that the occupation should be beneficial to the occupiers. It is sufficient if the property be capable of yielding a clear rent over and above the necessary outgoings” (*r*). Thus, (i) if there is evidence of value, an occupier may be rateable, although his occupation in fact results in a loss to himself (*s*). So a tramway or light railway company may be rateable in respect of an unproductive system or portion of a system. The question of the “contributive value” of such an unproductive line will be discussed hereafter. (ii) The doctrine that lands held for public purposes, other than the purposes of the Crown, are on that account not rateable is now exploded. The circumstance does not affect its rateability (*t*). Thus a local authority, working a tramway by special statutory power or a light railway, in aid of the rates, is rateable as if they were private promoters, unless the position is such that to rate them would amount to merely taking the rates with one hand and paying them back with the other (*u*).

Military and naval tramways constructed under Military Tramways Act, 1887, and Naval Works Act, 1899 (*post*, pp. 287, 296), will be exempt from rating as being in the occupation of the Crown or its servants for the purposes of the Crown (*x*); but there will probably be a rateable occupation where other persons obtain the right to work such tramways under sect. 11 of Military Tramways Act, 1887, and still more probably

(*r*) *Mersey Docks and Harbour Board Trustees v. Cameron* (1865), 11 H. L. C. (11 E. R.) 443; 35 L. J. M. C. 1, per Lord Westbury, L. C.

(*s*) *R. v. Parrot* (1794), 5 T. R. 593. Compare *R. v. Sherford* (1867), L. R. 2 Q. B. 593; 36 L. J. M. C. 113.

(*t*) *London County Council v. Erith Overseers*, *ub. sup.*

(*u*) Contrast *R. v. Beverley Gas Works* (1837), 6 A. & E. 645; 6 L. J. M. C. 84, with *R. v. Hull Justices* (1854), 4 E. & B. 29, *sub nom. R. v. Cooper*, 23 L. J. M. C. 183.

(*x*) *Mersey Docks and Harbour Board Trustees v. Cameron*, *ub. sup.*

Chap. III. where the Secretary of State sells a tramway and reserves rights of user to himself under that section.

II. Rateable Subjects.

In the case of a tramway the following may be enumerated as the subjects of assessment:—

- (i) The lines, cable conduits, electric conduits, power houses, stables and other buildings and works which constitute the “occupation” of the promoters in its most obvious sense.
- (ii) Posts and wires erected for electric and other purposes. That such things are rateable was decided in *Electric Telegraph Co. v. Salford Overseers (y)*.

The posts and wires in that case were entirely situated on or over the soil of persons other than their owners; the wires were in part carried on posts, in part in a cover attached to the parapet of a viaduct, and in part in an iron tube on the surface of the viaduct. The owners of the soil had the right to order them to be moved to another position, if they were found to be inconvenient. In his judgment, Pollock, C. B., says: “There is no distinction between the occupying land by passing through a fixed point of space in the air to another fixed point, or by passing in the same manner through land or water. Land extends upwards as well as downwards, and whether the wires and posts are fixed above or below the surface, they occupy a portion of the land”; and Platt, B., pointed out that the telegraph company had a continuous occupation, and not an easement.

The same principle has been extended to wires affixed to brackets, which belonged to and remained in

(y) (1855), 11 Ex. 181; 24 L. J. M. C. 146.

the control of the owners of the wire, but to which they could only obtain access by leave of the occupiers of the house to which the brackets were affixed (*z*).

It would be otherwise, it seems, as regards the rating of the posts, if they belonged to the owner of the soil who gave the owners of the wires leave to affix their wires thereto (*a*). In that case the owners of the posts would be rateable as occupiers of the land covered by the posts, enhanced in value by the rent which they received from the owners of the wires (*b*). But in the ordinary case of the lease of a tramway, the lessees would be the rateable occupiers of the posts and wires. It is possible that some such question arising from joint user of wires might arise in connection with a tramway, as was settled, with hesitation, in *Paris and New York Telegraph Co. v. Penzance Union* (*c*). There the Postmaster-General gave the company exclusive use of such wires as he chose to appoint for that purpose, he retaining possession. It was held that the company had exclusive enjoyment without exclusive occupation. *Sed quære*.

(iii) Plant and machinery.

The result of the great number of cases, and of Poor Rate Exemption Act, 1840 (3 & 4 Vict. c. 89), appears to be, put very shortly, as follows:—(*a*) Where plant or machinery is attached to the land occupied, attachment being a question of fact in each case, the value of the land and the plant or machinery together is to be taken for the purpose of a rate, and so the plant or machinery becomes actually rateable as part of the hereditament (*d*). (*b*) But in order that it may

(*z*) *Lancashire and Cheshire Telephone Exchange Co. v. Manchester Overseers* (1884), 14 Q. B. D. 267; 54 L. J. M. C. 63 (C. A.).

(*a*) *Watkins v. Milton-next-Gravesend Overseers* (1868), L. R. 3 Q. B. 350, 354, per Blackburn, J.

(*b*) *S. C. sub nom. Watkins v. Gravesend and Milton Overseers*, 37 L. J. M. C. 73, 76, per Blackburn, J.

(*c*) (1884), 12 Q. B. D. 552; 53 L. J. M. C. 189.

(*d*) *R. v. Birmingham and Staffordshire Gas Light Co.* (1837), 6 A. & E.

Chap. III. be so rateable, the question of attachment will be strictly regarded; it must amount to an actual accession to the land, and not be merely intended to steady or otherwise facilitate the working of the thing attached(*e*). (c) Where machinery and plant is not so attached, so as to make it rateable as part of the hereditament, yet its value is to be taken into account in ascertaining the rateable value of the hereditament, if it is on the hereditament for the purpose of making it, and does in fact make it, suitable for the particular purpose for which it is used—that is to say, practically the question is whether its presence on the hereditament would increase the rent which the “hypothetical tenant” (as to this personage, see below) would give for the hereditament(*f*). How far this principle is applicable in practice, and whether it can be proper to utilise non-rateable subjects to enhance the value of what is rateable, may very reasonably be doubted. The question is of growing importance to tramways as the use of mechanical power increases. If the words of the judgment of Lord Esher, M. R., in the last-cited case, were taken literally, even rolling stock could be taken into account in valuing a tramway.

III. Assessment.

A. VALUE.

(i) *Value in General.*

By Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1, a poor rate is to be made upon “an esti-

634; 6 L. J. M. C. 92; *Great Western Railway Co. v. Melksham Union* (1870), 34 J. P. 692 (rails and sleepers).

(c) *R. v. Halstead Overseers* (1867), 32 J. P. 118; *Chidley v. West Ham Churchwardens* (1874), 32 L. T. 486; 39 J. P. 310. As to the latter of these cases, see *Reynolds v. Ashby & Son, Ltd.*, [1903] 1 K. B. 87; 72 L. J. K. B. 51 (C. A.).

(f) *Tyne Boiler Works Co. v. Longbenton Overseers or Tynemouth Union* (1886), 18 Q. B. D. 81; 56 L. J. M. C. 8 (C. A.); *Crockett and Jones v. Northampton Union* (1902), 18 T. L. R. 451.

mate of the net annual value" [called "rateable value" in the Schedule to the Act] "of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes and tithe commutation rentcharge, if any" [this rent is called the "gross estimated rental" in Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 15 and Schedule, the Schedule also referring to "rateable value," as above], "and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent."

For the Metropolis, the form of valuation list is given in Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), Sched. II. "Gross value" therein is defined, by sect. 4, to mean "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rentcharge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent"; and "rateable value" is defined to mean "the gross value after deducting therefrom the probable annual average cost of the repairs, insurance and other expenses as aforesaid."

These principles were applied to a tramway by Mathew, J., in *In re London County Council and London Street Tramways Co. (g)*, in the following words: "To get at the value of the hereditament you take the profits, deduct the tenant's charges and reasonable profits, and what is left is the rent which would be paid by a tenant for the opportunity of earning his profit. By capitalising that rental you arrive at the value of the hereditament in question."

Chap. III.

The provisions of the above statutes bring in the fictitious personage known as the "hypothetical tenant." His existence is conceivable in connection with a tenanted hereditament regarded as a whole, but his personality becomes almost grotesque when it is necessary to regard him as bargaining for the lease of a fragment of railway or tramway situated in a particular parish, as we shall see hereafter. We are bound, however, always to consider his shadowy form as part of the haze which surrounds the subject of rating. In looking for this personage, we are entitled to consider the actual occupier as a possible yearly tenant, even though it is impossible for him in fact or in law to be such tenant (*h*). This will apply, it seems, to a tramway where the occupier would be debarred by Tramways Act, 1870, from taking a lease, though this was doubted by Madden, C. J., in *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.* (*i*), and *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation* (*j*). The rent paid at the time of the assessment is not conclusive evidence of value, though in a proper case it may be a substantial element in the determination of value (*k*); but we must distinguish the case where, as may happen in connection with a railway or a tramway, the persons who are the actual occupiers *received* rent from other persons for an easement over the property. They are liable to be rated in respect of the amount of such rent, though owing to circumstances it represents more than the existing value of the easement (*l*), or less than such value (*m*). That the rent actually paid

(*h*) *London County Council v. Erith Overseers*, [1893] A. C. 562; 63 L. J. M. C. 9.

(*i*) (1894), 20 Vict. L. R. 36, 47.

(*j*)¹ (1899), 25 Vict. L. R. 5, 17-18.

(*k*) *R. v. Skingle* (1798), 7 T. R. 549. Compare *New River Co. v. Hertford Union*, [1902] 2 K. B. 597; 71 L. J. K. B. 827 (C. A.).

(*l*) *R. v. Fletton Overseers* (1861), 3 E. & E. 450; 30 L. J. M. C. 89.

(*m*) *Altrincham Union v. Cheshire Lines Committee* (1885), 15 Q. B. D. 597.

at the time is not conclusive of value is the natural conclusion from the principle that the present, and not the past or future, condition and value of the hereditament are to form the basis of the rate (*n*). In that case the Dock Company were prohibited by statute from taking any tolls for the use of railway and tramway lines which formed part of their dock system, and it was held that the rent, which the hypothetical tenant would pay for the lines if there were no such statutory prohibition, ought not to be taken into account in assessing their rateable value. On the same principle, the rateable value of a hereditament, which is depreciated at the moment by unavoidable circumstances, is its actual value, and not the value which it would have but for such circumstances (*o*).

It is otherwise where the occupier voluntarily, by the terms of his occupation, by contract, or in some other manner, deprives himself of part of the value of the hereditament—he is then rateable in respect of the whole value (*p*); or where there is no evidence that the circumstances, which affect the value of the hereditament at the moment, are anything but transitory (*q*).

But it must be remembered throughout that it is the rent that the hypothetical yearly tenant might be expected to give which is the basis of the rateable value, and therefore the profits, which are being earned on the hereditament at the moment, are only to be considered in so far as they would affect such

(*n*) *Sculcoates Union v. Dock Company at Kingston-upon-Hull*, [1895] A. C. 136, 142-3; 64 L. J. M. C. 49, 51.

(*o*) *Staley v. Castleton Overseers* (1864), 5 B. & S. 505; 33 L. J. M. C. 178; *Harter v. Salford Overseers* (1865), 6 B. & S. 591; 34 L. J. M. C. 206.

(*p*) *R. v. Rhymney Railway Co.* (1869), L. R. 4 Q. B. 276; 38 L. J. M. C. 75; *R. v. Sherford* (1867), L. R. 2 Q. B. 503; 36 L. J. M. C. 113; *Melbourne Tramway and Omnibus Co. v. Fitzroy Corporation*, [1901] A. C. 153, 170; 70 L. J. P. C. 1, 7.

(*q*) *Hoyle and Jackson v. Oldham Union*, [1894] 2 Q. B. 372; 63 L. J. M. C. 178 (C. A.).

Chap. III. rent. Trade profits are not rated as such, but if the nature of the hereditament is such as to enable such profits to be earned, then the value of the hereditament is increased by that fact, and the amount of such trade profits has to be taken into account in the estimation of what the hypothetical tenant would give for the hereditament, which provided the opportunity of earning such profits, even though the actual occupier cannot apply his profits to his own benefit(*r*). This principle is of peculiar importance in the case of tramways and railways, where the hereditaments would be nothing without the trade, and the trade would be nothing without the hereditaments(*s*). The profits of a particular occupier, then, ought logically to be considered only in so far as they affect the rent which would be paid by the hypothetical tenant, as they undoubtedly would do where the trade was such that it could be only carried on on the particular hereditaments which were under discussion(*t*). This would generally be the case where a tramway or railway was in question; but even here a particular occupier's profits would not be considered where there was evidence that, owing to special circumstances—as, for instance, the working of a line at a loss for the purpose of deriving benefit elsewhere—such profits did not bear a fair relation to the rateable value of the hereditament(*u*).

We may here add another matter which may be taken into account, but only as a criterion, in estimating the rateable value, namely, the sum to which reasonable annual interest on the structural value

(*r*) *Mersey Docks and Harbour Board v. Birkenhead Union*, [1901] A. C. 175; 70 L. J. K. B. 584.

(*s*) *R. v. London & South Western Railway Co.* (1842), 1 Q. B. 558; 11 L. J. M. C. 93; *R. v. Grand Junction Railway Co.* (1844), 4 Q. B. 18; 13 L. J. M. C. 94.

(*t*) *Clarke v. Alderbury Union* (1880), 6 Q. B. D. 139; 50 L. J. M. C. 33.

(*u*) *London & North Western Railway Co. v. Irthlingborough Overseers* (1876), 35 L. T. 327; 40 J. P. 790.

would amount (*x*); but the structural value must not necessarily be taken to be the same as the amount of capital expended on the structure (*y*). Chap. III.

The Acts governing the valuation of lands for rating purposes in Scotland are enumerated in note (*y*) to sect. 26 of Light Railways Act, 1896.

The above principles will be applicable in their appropriate measure to the rating of a tramway or a railway and their works. But inasmuch as tramways and railways are never in fact taken on yearly tenancies, and inasmuch as the special nature of their business, which is a monopoly of carrying passengers and goods along a particular route, renders it impossible, or almost impossible, to estimate their rateable value by comparison with other similar systems, it becomes obligatory in assessing them to have recourse to what may be called the method of receipts and deductions. By this method, which is explained in detail below, we arrive at the rent the hypothetical tenant would give. The matter will be discussed at first on the assumption that the tramway, with its appurtenances, is situated entirely in one parish. It is true that the modern practice is to ascertain the rateable value in each parish separately in the first instance, where the system runs into more than one parish, and therefore never to work out the rateable value of the system as a whole at all. But in view of the peculiar conditions of tramway rating, and for the sake of simplicity, it has been thought best to reserve the discussion of the parochial principle, as it is called, till the end.

(*x*) *Liverpool Corporation v. Llanfyllin Union*, [1899] 2 Q. B. 14; 68 L. J. Q. B. 762.

(*y*) *R. v. Mile End Old Town Overseers* (1847), 10 Q. B. 208, 218; 16 L. J. M. C. 184, 188.

Chap. III.(ii) *Value in Detail.*(a) *Gross Receipts.*

In assessing a tramway undertaking, then, it is necessary first to ascertain the amount of the gross receipts(*z*). For this purpose the accounts for the year of assessment—indeed, the latest information procurable—down to the actual making of the rate, should be utilised(*a*); or, in the Metropolis, down to the actual making of the valuation list. It has been decided, in the Metropolis, that where there was an appeal to quarter sessions, the accounts of a tramway company down to the end of the year immediately preceding the hearing of the appeal might be taken, although the list had been made six months before(*b*). It is not proper to take an average of the preceding years(*c*). It should be added that in practice it is not considered whether the system of the promoters or lessees is composed of one undertaking or of several separate undertakings (see further as to this Tramways Act, 1870, s. 43, note (*o*), *post*, p. 178). It might happen that several undertakings, though under one control, were so far distinct financially that the separate rating of each undertaking would be necessary, but, apart from this, a single occupation will naturally lead to a single rating(*d*). The gross

(*z*) *London Tramways Co., Ltd. v. Lambeth* (1874), 31 L. T. 319; *Ryde's Met. Rat. App.* 103 (Q. S.); *Melbourne Tramway and Omnibus Co. v. Fitzroy Corporation*, [1901] A. C. 153; 70 L. J. P. C. 1.

(*a*) *London & North Western Railway Co. v. Wigan Union* (1876), 2 Nev. & Mac. 240; *R. v. London, Brighton & South Coast Railway Co.* (1851), 15 Q. B. 313, 367-8; 20 L. J. M. C. 124, 146-7.

(*b*) *London Street Tramways Co. v. St. Mary, Islington* (1886), *Ryde's Rat. App.* (1886-90), 147 (Q. S.).

(*c*) *London & North Western Railway Co. v. Wigan Union*, *ub. sup.*; *London Street Tramways Co. v. St. Mary, Islington*, *ub. sup.*

(*d*) Compare *North Eastern Railway Co. v. York Union*, [1900] 1 Q. B. 733; 69 L. J. Q. B. 376.

receipts of a tramway company will include, as a Chap. III. rule, the following items, or some of them:—

- (i) The gross sum earned by the company by the exercise of their statutory powers as carriers upon their system.
- (ii) Any sums or other consideration received by them in respect of running powers granted by them over their system or any part of it. This will apply whether the consideration be a toll (*e*), or a fixed sum (*f*), or the grant of reciprocal running powers (*g*).
- (iii) Terminal charges, if any. These are to be regarded as part of the general earnings of the line, and not as earnings of the stations where the services are rendered (*h*). But if such terminal charges include charges for cartage and delivery, these must be deducted before the terminals are added to the gross receipts (*i*).
- (iv) Rents or other payments received in respect of the user of buildings, offices, &c. belonging to the company (*k*).
- (v) Any other receipts which can be said to arise out of the rateable hereditaments, and not to be, like cartage and delivery above, made independently of the hereditaments. Such receipts would be, for instance, receipts from advertisements, in respect of which the company is now rateable by Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27).

(*e*) *R. v. St. Pancras Vestry* (1863), 3 B. & S. 810; 32 L. J. M. C. 146.

(*f*) *R. v. Fletton Overseers* (1861), 3 E. & E. 450; 30 L. J. M. C. 89.

(*g*) *R. v. London, Brighton & South Coast Railway Co.* (1851), 15 Q. B. 313; 20 L. J. M. C. 124; *Great Western Railway Co. v. Badgworth Overseers* (1867), L. R. 2 Q. B. 251; 36 L. J. M. C. 33.

(*h*) *R. v. Eastern Counties Railway Co.* (1863), 4 B. & S. 58; 32 L. J. M. C. 174.

(*i*) *Manchester, Sheffield & Lincolnshire Railway Co. v. Caistor Union* (1874), 2 Nev. & Mac. 53.

(*k*) *North Metropolitan Tramways Co. v. St. Mary, Islington* (1874), Ryde's Met. Rat. App. 112 (Q. S.).

Chap. III. In *North Metropolitan Tramways Co. v. St. Mary, Islington (kk)*, the Court ordered the company's receipts from advertisements exhibited in their cars to be added to the gross receipts.

(b) *Deductions.*

(a) *Absolute Deductions*—that is to say, deductions which have to be made in any event, whether the tramway and its appurtenances are situated in one parish or in several parishes.

- (i) The cost of the maintenance and repair of the lines, roadway, works, fixed machinery, &c. Repairs are specifically mentioned in the Rating Acts cited above, and include everything necessary to maintain the hereditament in a state to command the estimated rent.

In *London Tramways Co., Ltd. v. Lambeth (l)* this cost was fixed by the Court at 350*l.* per mile, and it appears that this sum included all the repairs which the company were bound to carry out by statute, both to the tramway track itself and to the eighteen inches on either side thereof (*m*). The Court found as a fact that all these repairs, including those of the eighteen inches, were essential to the maintenance and efficiency of the system. This, it is submitted, is reasonable, since the support of the rails necessitates some sort of paving outside the track as well as upon it; and eighteen inches presumably was fixed by the Legislature, because it was thought that that extent of paving was about sufficient to secure the rails and to enable the track to merge conveniently with the existing surface of the road. The paving of this eighteen inches should not, it is suggested, be regarded as in the nature of a payment by way of consideration for the franchise granted

(kk) (1874), Ryde's Met. Rat. App. 112 (Q. S.).

(l) (1874), 31 L. T. 319; Ryde's Met. Rat. App. 103 (Q. S.).

(m) See Tramways Act, 1870, s. 28.

to the promoters. If it were such, it ought not to be Chap. III.
deducted. (See *post*, p. 72.)

- (ii) The depreciation of lines, fixed machinery, and other works(*n*). The company will be entitled to deduct the probable annual average amount of such depreciation, although they do not in fact set aside a fund to meet it(*o*).
- (iii) Cost of maintenance of rolling stock, track machinery, horses, and any other moveable property which are essential to the business, but do not form part of the rateable hereditament.
- (iv) Depreciation of the chattels last mentioned(*p*). In *London Tramways Co., Ltd. v. Lambeth, ub. sup.*, the life of a tramway horse was taken to be four years, and that of a horse-car fourteen years. The method of calculation must depend upon the facts of each case(*q*), especially the method of traction and the nature of the traffic(*r*).
- (v) Working expenses in the strict sense, that is to say, wages, fuel, machine expenditure of all kinds, forage, lighting, office expenses, stationery, &c.
- (vi) Rent (including the cost of repairs) paid by the company for premises leased by them for the purposes of their undertaking, and rent paid for the use of rolling stock. The former seems to have been deducted in *Lon-*

(*n*) *R. v. Great Western Railway Co.* (1852), 15 Q. B. 379, 1085; 21 L. J. M. C. 84.

(*o*) *R. v. London, Brighton & South Coast Railway Co.* (1851), 15 Q. B. 313, 366; 20 L. J. M. C. 124, 146.

(*p*) *R. v. Great Western Railway Co.* (1852), 15 Q. B. 379, 1085; 21 L. J. M. C. 84.

(*q*) *Great Eastern Railway Co. v. Haughley Overseers* (1866), L. R. 1 Q. B. 666; 35 L. J. M. C. 229.

(*r*) See also *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.* (1894), 20 Vict. L. R. 36, 45-6.

Chap. III.

- don Tramways Co., Ltd. v. Lambeth, ub. sup.*, and it seems reasonable that it should be, though this has been questioned. As to the latter compare *R. (Cork and Muskerry Light Railway Co., Ltd.) v. Co. Cork Treasurer (s)*, and *In re Cornwall Minerals Railway Co. (t)*.
- (vii) Tolls or other sums paid by the company to other companies for the carriage of through passengers, such tolls or sums forming, of course, part of the fares imposed by the company upon such passengers (*u*).
- (viii) Directors' and auditors' fees (*x*).
- (ix) Law charges, costs, and expenses (*y*). An average sum was permitted to be taken in *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation (z)*.
- (x) Rates and taxes and tithe commutation rent-charge, if any. Specified as deductions in the Rating Acts above, p. 59.
- (xi) Insurance. Specified as a deduction in the Rating Acts.
- (xii) A sum in respect of risks, accidents and casualties, and compensation for the same (*a*). A sum of $12\frac{1}{2}$ per cent. on the tenant's capital outlay was allowed in *London Tramways Co., Ltd. v. Lambeth, ub. sup.*, under this head and

(s) (1889), 24 L. R. I. 415.

(t) (1882), 48 L. T. 41 (C. A.).

(u) *R. v. St. Pancras Vestry* (1863), 3 B. & S. 810; 32 L. J. M. C. 146.

(x) *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587; 20 L. J. M. C. 155; *London Tramways Co., Ltd. v. Lambeth, ub. sup.*; *North Metropolitan Tramways Co. v. St. Mary, Islington* (1874), Ryde's Met. Rat. App. 112 (Q. S.); *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd., ub. sup.*

(y) *London Tramways Co., Ltd. v. Lambeth, ub. sup.*; and see *R. (Dublin and Blessington Steam Tramway Co.) v. Co. Dublin Grand Jury and Finance Committee* (1892), 32 L. R. I. 644 (C. A.).

(z) (1899), 25 Vict. L. R. 5.

(a) See *R. (Cork and Muskerry Light Railway Co., Ltd.) v. Co. Cork Treasurer* (1889), 24 L. R. I. 415; and *In re Tralee and Dingle Light Railway Co.*, [1894] 2 I. R. 115.

for tenant's profits combined, but *London Tramways Co., Ltd. v. Lambeth* (b) shows that $2\frac{1}{2}$ per cent. only of this was attributable to the present head. In *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.*, *ub. sup.*, $\frac{1}{2}$ per cent. was allowed, but this represented payments which had been actually made, and not an estimate. In respect of systems where the Workmen's Compensation Act, 1897 (c) applies in all cases of accident, and not merely to works of construction or repair (d), it would seem that the percentage ought to be increased.

Chap. III.

(xiii) Tenant's profits.

It is clear that the profit a tenant might reasonably expect to earn must be deducted from the gross receipts before we can discover what rent he would be willing to pay; 10 per cent. on the tenant's capital outlay is the amount usually deducted under this head (e). In allowing the same percentage in *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation* (f), the Board said: "In valuing a property of this kind there comes in another element of uncertainty which does not usually exist in the case of houses and land, namely, that of profit. Nobody would take the occupation and use of a tramway except for the single purpose of making profit. This difficulty, however, has been met by the somewhat inexact and rough, but essentially just, method of making an allowance for the supposed profits of the supposed tenant." It will be deducted even in a parish where it is not earned (g). But, where a rail-

(b) (1876), *Ryde's Met. Rat. App.* 199 (Q. S.).

(c) 60 & 61 Vict. c. 37.

(d) See *Tramways Act*, 1870, s. 55, note (h), *post*, p. 255.

(e) *London Tramways Co., Ltd. v. Lambeth* (1874), *ub. sup.*

(f) [1901] A. C. 153, 170; 70 L. J. P. C. 1, 7.

(g) *London Tramways Co., Ltd. v. Lambeth* (1876), *ub. sup.*

Chap. III. way company made and repaired their own rolling stock, they were not allowed to deduct any sum for trade profits in respect thereof (*h*).

That tenant's profits should be estimated at a percentage on the value of plant and rolling stock is a settled rule in Scotland (*i*), just as it is now the settled rule in England also.

(xiv) Interest on tenant's capital.

The percentage to be allowed in respect of this, of tenant's profits, and of risks ought to be calculated on the moveable articles employed in the business, not on turntables, cranes, weighing machines, fixed engines, or anything which is so attached to the hereditament as to become part of it, or, though capable of being removed, are so far attached that it is intended that they should remain permanently connected with the hereditament, and remain permanent appendages to it as essential to its working (*k*). Note that here plant and machinery are regarded from a different aspect to that in which they are regarded in connection with their own rateability. (See *ante*, p. 57.) Further, the percentage to be allowed is to be calculated upon the depreciated value of the moveables, and not upon their cost price (*l*).

Whether the deduction of interest on floating capital is to be allowed will depend on whether any, and (if any) how much is required for the proper conduct of the business of the company, and whether an excessive or a proper amount has been reserved as floating capital (*m*). Interest on a reasonable amount

(*h*) *London & North Western Railway Co. v. Wigan Union* (1876), 2 Nev. & Mac. 240, 246-7.

(*i*) *Valle of Clyde Tramway Co. v. Muir* (1883), 21 S. L. R. 273.

(*k*) *R. v. North Staffordshire Railway Co.* (1860), 3 E. & E. 392; 30 L. J. M. C. 68.

(*l*) *R. v. North Staffordshire Railway Co.*, *ub. sup.*

(*m*) *R. v. North Staffordshire Railway Co.*, *ub. sup.*

will be allowed as a rule (*n*); but it is obvious that it cannot be necessary for a tramway company to reserve as large a proportion of its capital as floating capital as a railway company is obliged to do. In *North Metropolitan Tramways Co. v. St. Mary, Islington* (*o*), the Court would only allow interest on 2,000*l.* out of the 3,000*l.* which the company had at their bankers. What rate will be allowed for interest on tenant's capital is entirely a question of fact (*p*). The tenant ought to be considered to be entitled to a reasonable rate (*q*). The rate allowed in that case was 7 per cent. The usual practice seems to be to allow 5 per cent., together with 10 per cent. for tenant's profits and $2\frac{1}{2}$ per cent. for risks, as in *London Tramways Co., Ltd. v. Lambeth, ub. sup.*, and *North Metropolitan Tramways Co. v. St. Mary, Islington, ub. sup.* Sometimes different rates have been allowed on the capital sums invested in different species of property, or reserved as floating capital, as in *Manchester, Sheffield and Lincolnshire Railway Co. v. Cuistor Union* (*r*), and *R. v. Mile End Old Town Overseers* (*s*).

It should be noted here that Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), Sched. III., fixes the maximum rate of deductions in various cases, but fixes nothing for railways, and, of course, does not mention tramways.

The following deductions may not, however, be made in arriving at the rateable value of a tramway and its appurtenances:—

- (i) The depreciation of leaseholds belonging to the company (*t*).

(*n*) *London & North Western Railway Co. v. Wigan Union* (1876), 2 Nev. & Mac. 240.

(*o*) (1874), Ryde's Met. Rat. App. 112 (Q. S.).

(*p*) *Sheffield United Gas Light Co. v. Sheffield Overseers* (1863), 4 B. & S. 135, 147; 32 L. J. M. C. 169, 173.

(*q*) *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.* (1894), 20 Vict. L. R. 36, 47-8.

(*r*) (1874), 2 Nev. & Mac. 53.

(*s*) (1847), 10 Q. B. 208; 16 L. J. M. C. 184.

(*t*) *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation* (1899), 25 Vict. L. R. 5.

Chap. III. It does not seem very clear why this deduction should not be allowed.

(ii) Income tax.

This should not be deducted, inasmuch as it is a tax on the tenant's net profits, after he has paid his rent and outgoings, and cannot be regarded as a charge on his occupation (*u*). If the judgment in *R. v. Great Western Railway Co.* (*x*) was, in fact, contrary to this (it probably was not), it cannot be supported.

(iii) The consideration paid by the company for the right to occupy.

It seems clear that this can have no effect on the value of the occupation which the company has bought thereby, or on the rent which the hypothetical tenant would be willing to pay. It is a matter purely between the company and the persons from whom they bought their rights. The form of the consideration does not affect the question. This was decided in *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation* (*y*), where the consideration was a lump sum, discharged by payments of interest and a sinking fund. *Quære* whether this is consistent with *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.* (*z*). So it has been held in Ireland that a tramway company may not deduct annual payments made by it to a local authority in consideration of their not exercising their statutory right of purchase (*a*).

(iv) It seems clear that nothing can be deducted for the reduction in value caused by the

(*u*) *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587, 611; 20 L. J. M. C. 155, 162.

(*x*) (1846), 6 Q. B. 179, 205; 15 L. J. M. C. 80, 87-8.

(*y*) [1901] A. C. 153; 70 L. J. P. C. 1.

(*z*) (1894), 20 Vict. L. R. 36.

(*a*) *Belfast Street Tramways Co. v. Commissioner of Valuation* (1895), 29 Ir. L. T. R. 138.

gradually approaching loss of the company's franchise through compulsory purchase by a local authority.

Chap. III.

Although this may cause an ultimate loss of capital to the company, it does not affect the value of the hereditament *per se*, nor does it affect in any tangible way the yearly rent which a tenant would be willing to pay. On such purchase the moveable stock is taken over at a valuation under Tramways Act, 1870, s. 43.

(*ε*) *Deductions for parochial purposes*—that is to say, deductions which are made where the hereditaments, with which they are concerned, are to be separately rated in a particular parish.

It is to be observed that, if we desired to arrive at the rateable value of the tramway's running lines alone, apart from the value of the items mentioned below, those items would have to be deducted from the gross receipts, whether they were separately rated or not. They are not direct sources of profit, but only indirectly productive (*b*).

- (i) The rateable value of stations, together with any lines belonging to them which can in fact be regarded as not being running lines (*c*).

The question of stations is, of course, of little importance with regard to tramways proper.

It is the practice in assessing stations to take 4 per cent. on the fee-simple value of the land and 5 per cent. on the structural value of the buildings (*d*).

- (ii) The rateable value of other indirectly productive portions of the system, such as signal-boxes,

(*b*) *R. v. Great Western Railway Co.* (1846), 6 Q. B. 179; 15 L. J. M. C. 80.

(*c*) *Stockport Union v. London & North Western Railway Co.* (1898), 67 L. J. Q. B. 335.

(*d*) *London & South Western Railway Co. v. Lambeth* (1881), Ryde's Met. Rat. App. 258 (Q. S.).

Chap. III.

water-tanks, turntables and the like. These may be assessed on the same principle as stations.

The usual deduction, which is made from the gross receipts of a railway system to cover the indirectly productive portions of it, is $5\frac{1}{2}$ per cent. of the gross receipts (*e*). This percentage would be very much too large in the case of a tramway, and no doubt the deduction would there have to be made in detail, and not by rule of thumb. Regard should be had, in making the estimate, to the fact that the buildings are used for a tramway or railway, and not for other purposes. It may be suggested that in estimating the rateable value of the indirectly productive portions of a tramway system no account should be taken of enhanced structural value due to the erection of unnecessarily elaborate buildings for the purposes of advertisement or to satisfy a fastidious architectural taste. The rateable value should be fixed at that of buildings which are reasonably sufficient to carry on the business (*f*).

- (iii) The rateable value of stables, car-sheds and the like, in the case of lines worked by animal power; of engine-houses, power-houses, car-sheds and the like, where mechanical power is used.

That the rateable value of engine-houses was to be so deducted and attributed to the particular parish in which they were situate was held by the Judicial Committee in *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation* (*g*). The argument that they were to be regarded as part of the running lines, and

(*e*) *Midland Railway Co. v. Pontefract Union*, [1901] 2 K. B. 189; 70 L. J. K. B. 691.

(*f*) See *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.* (1894), 20 Vict. L. R. 36, 48.

(*g*) [1901] A. C. 153; 70 L. J. P. C. 1.

that their value should be apportioned among the various parishes on the mileage principle, was not accepted. In rating engine-houses and power-houses due regard must of course be paid to the principles of the rating of plant and machinery, briefly set out above (p. 57). Chap. III.

- (iv) The rateable value of offices, timekeepers' boxes, shelters, and other buildings and fixtures used in the executive part of the business (*h*).
- (v) The rateable value of any special profits which arise out of the hereditaments in any particular parish.
- (vi) The rates paid on the above-mentioned items, except in so far as they have already been taken into account in the estimation of the rateable value thereof.

By making the permissible deductions which are set out above, or such of them as are appropriate to the particular case, from the gross receipts, we arrive at the net annual value or rateable value—the sum at which the tramway and its appurtenances is to be rated.

It must be noted that the land occupied by a tramway is not “land used only as a railway for public conveyance” within the meaning of Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1b). If it were, it would be assessed to general district rates at one-fourth only of its net annual value (*i*). The same principle would no doubt apply to contributions raised in rural districts under sect. 230 of Public Health Act, 1875.

The tramway in the above case was connected with,

(*h*) See *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.*, *sup.*

(*i*) *Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357; 61 L. J. M. C. 124.

Chap. III. and worked in connection with a railway, but the Court held it to be an "ordinary tramway." Compare with the same case *Williams v. London & North Western Railway Co.* (*k*), which approves it, where a railway in a dépôt, connected by a tram line and a dock railway with the company's system, was held not to be within similar words contained in a local Act; and *R. v. Newport Dock Co.* (*l*), where a dock railway was held to be within the words (*m*).

No doubt a tramway benefits by the expenditure of the rates in street-cleaning, lighting, &c., and it is proper that it should be assessed to them at its full rateable value. But a light railway may approximate sufficiently closely to an ordinary railway to be regarded as such for the purpose of assessment under the Public Health Acts. *Quere* whether a light railway on a public thoroughfare is rateable as a railway, and not as a tramway merely because it is made under the Light Railways Act and not under the Tramways Act (*n*).

In connection with the valuation of light railways, reference should also be made to the English and Scots rating and valuation Acts enumerated in note (*q*) to sect. 12 of Light Railways Act, 1896, and to Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 133, and Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), s. 127. As to the application of the last-mentioned sections, where the poor rate is merged in a general rate, see *Islington Corporation v. London School Board* (*o*).

(*k*) [1900] 1 Q. B. 760; 69 L. J. Q. B. 531 (C. A.).

(*l*) (1862), 2 B. & S. 708; 31 L. J. M. C. 266.

(*m*) See also *London & India Docks Co. v. Great Eastern Railway Co.*, [1902] 1 K. B. 568; 71 L. J. K. B. 369 (C. A.).

(*n*) See *Liverpool and Prescott Case* (1898), Rep. IV. 14, Oxley, 180.

(*o*) [1902] 2 K. B. 701; 71 L. J. K. B. 852; (1903) W. N. 125; 19 T. L. R. 589 (C. A.).

B. THE PAROCHIAL PRINCIPLE.

This principle is simply that the rateable value of the running lines of a railway or tramway situate in a particular parish is to be estimated by taking into account the earnings and expenses made by the lines in that particular parish. It is easy to apply the principle to hereditaments situate in a single parish, but in order to apply it to running lines it becomes necessary to regard the lines as a series of different hereditaments with a series of different hypothetical tenants. That this must be done, however, in the case of railways has been settled law since *R. v. London, Brighton & South Coast Railway Co.* (*p*). The items enumerated under Deductions (*z*), above—that is to say, the indirectly productive portions of the system—are rated separately in the parishes to which they belong (*q*). So far the application of the principle to railways is logical in theory, though difficult enough in practice.

But the Courts have not adhered to their own principle. They have rated running lines in particular parishes as being of value when in fact they produced no profit, and, when they produced some profit, they have rated them as on a larger profit. This is due to the doctrine of “contributive value,” which has been superadded to the parochial principle. This doctrine is not of sufficient importance for our present purpose to justify detailed discussion. It will be seen from an examination of the cases that there has been a grave difference of opinion in the Courts as to its proper application, though the more prevalent opinion seems to be that “contributive value” may be taken into account (*r*).

(*p*) (1851), 15 Q. B. 313; 20 L. J. M. C. 124.

(*q*) *R. v. Great Western Railway Co.* (1846), 6 Q. B. 179; 15 L. J. M. C. 80; *R. v. Mile End Old Town Overseers* (1847), 10 Q. B. 208; 10 L. J. M. C. 184.

(*r*) See *London & North Western Railway Co. v. Cannock Overseers*

Chap. III.

The fact is that the Courts, if the similitude may be respectfully applied, seem to have been trying to ride two horses at once. If it is proper to consider the profits actually earned by land as the value of the land, then the "parochial principle" should be applied, and applied without exception; if, on the other hand, it is proper (and it is submitted that it undoubtedly is proper) to regard profits actually earned and value as things which are closely connected but not identical, then "contributive value" should be taken into account. But if the "parochial principle" strictly applies, then the doctrine of "contributive value" does not, and *vice versa*. If the "parochial principle" is difficult of application to a railway, it is almost impossible to apply it to a tramway. The system on which tickets for passengers are issued and goods are charged for on a railway renders it possible in some degree to allocate the proper proportion of profits earned to a particular piece of line. But the *raison d'être* of a tramway is the fact that passengers can get on when they like, and get off when they like; that tickets are issued in the cars and not at a booking-office, and for a journey equivalent to so much money paid rather than for a journey from point to point. The gradually increasing introduction of the American system of charging a uniform fare for any distance renders the attempt to apply the "parochial principle" still more futile.

In fact, in the cases on tramway rating which have been reported hitherto, the "parochial principle" is said to be applicable, but when the Court comes to apply it, it is driven to such a rough approximation

(1863), 9 L. T. 325; 28 J. P. 181; *R. v. London & North Western Railway Co.* (1874), L. R. 9 Q. B. 134, *sub nom. R. v. Bedford Union*, 43 L. J. M. C. 81; and *London & North Western Railway Co. v. Irthlingborough Overseers* (1876), 35 L. T. 327; 40 J. P. 790, as against *Great Eastern Railway Co. v. Haughley Overseers* (1866), L. R. 1 Q. B. 666; 35 L. J. M. C. 229; and *R. v. Llantrissant* (1869), L. R. 4 Q. B. 354; 38 L. J. M. C. 93.

that the principle becomes almost unrecognisable. Chap. III.
The difficulty arises from the attempt to apply a principle to a species of hereditament of which its framers never dreamt, and from the attempt to make an estimate when there are no accounts in existence on which it can be based. In two respects, however, the rating of a tramway system is simpler than that of a railway: (i) There are not so many indirectly productive portions which call for separate rating; (ii) There are not so many special local outgoings or earnings which have to be rated in particular parishes. Both the receipts and the expenses may be said, as a rule, to be spread more equally over the whole system than they are in the case of a railway.

Hence some kind of mileage division, though the result must necessarily constitute only a very rough approximation indeed to the ideal application of the "parochial principle," will not work out so unfairly as it would if the profits and earnings of a railway were so divided.

Several methods are possible:—

- (i) Division of receipts and expenses according to the lineal mileage of the lines situate in each parish.

This would be a reasonably fair method under the following conditions:—

- (a) If the car traffic was fairly evenly distributed over the whole system,
- (b) if the population was fairly evenly distributed over the whole length of the lines, and
- (c) if the cars were used by the population mainly for journeys from various points on the route to various other points.

But such a state of things is scarcely likely to exist anywhere. As a rule, tramways are used to collect the population from various points on the route and

Chap. III. deposit them at one end of it, where either a business centre or the commencement of another system is situated; and in this case clearly the passenger traffic in the various parishes must be greater or less according as they are situated nearer to or farther from such end.

- (ii) Division according to lineal mileage, allowance being made, where there are branches, for the fact that certain portions of the lines are used by the traffic for more than one branch.

Thus, if a system had in one parish two branches from A and B, which joined at C, and the traffic from both these ran from C to D, and thence into another parish, the former parish would be entitled to reckon the lineal mileage from C to D twice over, inasmuch as it was utilised by the traffic of two branches.

This method was adopted in *London Tramways Co., Ltd. v. Lambeth(s)* with regard to receipts, but not with regard to expenses. It gets rid, to some extent, of the necessity that the facts should comply with condition (a) above, but it is still necessary that conditions (b) and (c) should be complied with, or the method will not be a fair one. In the case last cited an attempt was made to induce the Court to make some allowance for the unequal distribution of the population, but this was refused as having a too speculative basis.

The method was also adopted as to net profits, which is equivalent to its adoption both as to receipts and as to expenses, in *Melbourne Corporation v. Melbourne Tramway and Omnibus Co., Ltd.(t)*, and in *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation(u)*.

(s) (1874), 31 L. T. 319; Ryde's Met. Rat. App. 103 (Q. S.).

(t) (1894), 20 Vict. L. R. 36.

(u) (1899), 25 Vict. L. R. 5.

- (iii) Division according to the car mileage run in each parish. Chap. III.

This is a somewhat better method than the last, because it does away completely with the necessity that condition (a) should be complied with. But it is still subject to conditions (b) and (c), inasmuch as otherwise the average number of passengers on each car per mile will be greater on some parts of the route than on others, and it will not be easy, as a rule, to ascertain the amount of such car mileage.

In *London Tramways Co., Ltd. v. Lambeth, ub. sup.*, the expenses (other than horse expenses) were apportioned by this method.

The same decision also apportioned similarly the various other deductions, and the value of the stations, car-sheds and stables. If the Court possessed the requisite *data*, as it seems to have done, it would seem that they ought to have apportioned the receipts on the same method, which is fairer than method (ii). Neither does it seem fair to apportion, as they did, the receipts and expenses by two different methods. The horse expenses were treated separately in this case, and divided by method (ii), but as a general rule such expenses, and locomotive expenses generally, should be apportioned like any other expenses.

- (iv) Division according to passenger mileage and goods mileage, if goods be carried, in each parish.

This would clearly be the fairest method, but it is unlikely that there would ever be the requisite *data* to enable it to be applied. It is independent of conditions (a), (b) and (c). Its results would, however, be rendered slightly incorrect, if, owing to competition or other causes, fares over one portion of the route were lower or higher than those for the same distance over another portion of the route in a different parish, or in so far as workmen or other persons were

Chap. III. conveyed at special rates, and no separate account was kept of such conveyance.

It must be remembered that these suggested methods are attempts, however inadequate, to apply the parochial principle, and are not applications of what is called the "mileage principle" as against the "parochial principle." The "mileage principle," properly so called, consists in rating no building or anything else separately in any particular parish, but taking every part of the undertaking together, and then dividing the aggregate rateable value of the whole among the various parishes in which the undertaking is situated in proportion to the lineal mileage of tramway which each parish contains. It is now settled that this "mileage principle" is not to be applied to tramways (*v*).

(*v*) *Melbourne Tramway and Omnibus Co., Ltd. v. Fitzroy Corporation*, [1901] A. C. 153; 70 L. J. P. C. 1.

CHAPTER IV.

MISCELLANEOUS PROVISIONS RELATING TO TRAMWAYS AND
LIGHT RAILWAYS.

THERE are a certain number of statutory provisions which relate to Tramways or Light Railways, but which are of too general a nature or not of sufficient practical importance to be printed at length in the present work. It will be convenient to group them together here. Some of them, as will be seen, are discussed in their appropriate place in the notes to the Tramways and Light Railways Acts.

A. Provisions relating to Tramways.

(1) Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), applies, by sect. 2, to the whole or any portion of a tramway, whether worked by steam or otherwise. Some of the provisions of the Act could not in practice apply to a tramway. The portions which can so apply are sects. 3 to 13 and Sched. I. as to accounts and audits; sect. 17 as to furnishing particulars of charges for goods, where a tramway carries goods, as tramways are now beginning to do; sect. 18 as to the calculation of through tolls on two systems worked by one company; sect. 19 as to non-consumption of smoke where steam power is used; sect. 21 as to providing special cars for a prize-fight; sect. 24 as to removal of trees dangerous to a tramway; sects. 25 and 26 as to compensation for accidents (see also note (*h*) to sect. 55 of Tramways Act, 1870, *post*, p. 245); sects. 30 and 31 as to

Chap. IV. arbitrations by the Board of Trade; sect. 34 as to printing copies of the shareholders' address book; sects. 39 and 40 as to procedure.

(2) Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78), applies (sect. 2) to the whole or any portion of a tramway, whether worked by steam or otherwise, which has been authorised by any special Act of Parliament. Thus the Act, which, it must be observed, was passed after Tramways Act, 1870, appears not to apply to tramways authorised by a Provisional Order, which in its turn is confirmed by an Act which is a public general Act (see Tramways Act, 1870, ss. 4 and 14, and contrast Conveyance of Mails Act, 1893 (p. 304), where "Act" is defined to include Provisional Order). The reason for this is not at all obvious; it is probably merely a blunder. Further, the Act is to be construed (sect. 1 and Sched. II.) with certain previous Acts which have nothing to do with tramways. The sections applicable to tramways authorised by special Act would seem to be: sects. 3 and 4 as to inspection of tramways; sects. 6, 7 and 8 as to returns of and inquiries into accidents; sects. 9 and 10 as to returns of statistics, now made in the forms substituted for those in Sched. I. of the Act by the Board of Trade under Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 32; sects. 11 and 15 as to penalties. The Board of Trade have also issued certain instructions with regard to returns.

As a corollary to the above, Continuous Brakes Act, 1878 (41 & 42 Vict. c. 20), applies to such tramways as those to which the above Act applies, as "railway" in both Acts is expressed to have the same meaning. The application of this last Act to tramways is absurd.

(3) Railway Companies Securities Act, 1866 (29 & 30 Vict. c. 108), applies to (sect. 2) a tramway authorised

by Act of Parliament incorporating the Companies Chap. IV.
 Clauses Consolidation Act, 1845.

It provides for the registration of certain officers of the company, and for the making of returns and the registration of the company's loan, capital and other matters connected therewith.

(4) By Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16, a Secretary of State, after an Order in Council declaring the expediency of his action, may by warrant order any railroads, their plant and works, to be taken possession of on behalf of the Crown, and full compensation shall be paid. "Railroad" includes "any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other."

By National Defence Act, 1888 (51 & 52 Vict. c. 31), s. 4, whenever an order for the embodiment of the militia is in force, the Crown may, by order of a Secretary of State, require precedence for naval and military traffic on any railway; and provision is made for the manner of carrying the order out and for compensation. "Railway" is defined to include tramway in the terms of the last-cited Act.

(5) For the relation of tramcars to the various stage and hackney carriage Acts, see the notes to sects. 34 and 48 of Tramways Act, 1870, *post*, pp. 160, 204.

(6) Telegraph Act, 1878 (41 & 42 Vict. s. 76), by sect. 6, applies in part to tramways other than street tramways authorised by an Act passed after January 1st, 1878.

(7) The extent to which Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), and Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), apply to tramways and the persons employed thereon is fully discussed in note (h) to sect. 55 of Tramways Act, 1870, *post*, p. 252.

Chap. IV. (8) Notice of Accidents Act, 1894 (57 & 58 Vict. c. 28), by the Schedule, applies to the continuation, use, working, or repair of any railway, tramroad or tramway authorised by any local or personal Act of Parliament. This apparently ought not to cover a tramway authorised by Provisional Order confirmed by a public general Act (see above under head (2)), but the Board of Trade does, in fact, require a return of accidents from such tramways. It also applies to the use or working of any traction engine or other engine or machine worked by steam in the open air.

The Act provides (sect. 1) that notice shall be given to the Board of Trade of accidents causing loss of life or disablement for three days, and (sect. 3) for a formal investigation where necessary. By sect. 2, the Board of Trade may extend the Act to employments which are not enumerated in the Schedule, where there is special danger and more than twenty persons are employed by the same employer.

The form of general return will be found *post*, p. 380. The form of return of electrical accidents, made under the special provisions applicable to electric traction, is printed *post*, p. 381.

(9) "The improvement of land" in Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), means (*inter alia*) the making of permanent tramways and railways for all purposes connected with the improvement of an estate (sect. 9).

"Improvements" in Entail Amendment (Scotland) Act, 1875 (38 & 39 Vict. c. 61), is defined (sect. 3) to include (*inter alia*) the making of tramways or railways for the benefit of, and in so far as made within, the estate, but the Act also preserves (sect. 14) the operation of Improvement of Land Act, 1864.

Both these Acts contain provisions for the charging of settled or entailed estates for the purposes of the improvements mentioned. Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 25, defines improvements

authorised by that Act as the making or execution on or in connection with and for the benefit of settled land of (*inter alia*) tramways and railways or of any works for the purposes thereof, and of any operation incident to or necessary or proper in the execution of such works or necessary or proper for securing the full benefit thereof; and sect. 30 extends the improvements enumerated in Improvement of Land Act, 1864, to comprise all improvements authorised by the later Act. Chap. IV.

Entail Amendment (Scotland) Act, 1878 (41 & 42 Vict. c. 28), and Entail (Scotland) Act, 1882 (45 & 46 Vict. c. 53), amend and extend the Scots Act mentioned above. Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), s. 2, makes sect. 9 of the principal Act include, for Scotland, the additions contained in the Acts enumerated in Sched. I. to the Act; these comprise, *inter alia*, Settled Land Act, 1882. See further, as to the above Acts, notes (*c*) and (*d*) to Light Railways Act, 1896, s. 19, *post*, p. 506.

(10) By Revenue Act, 1884 (47 & 48 Vict. c. 62), s. 12, railway companies may apply for licences to sell tobacco and snuff in their carriages. This is extended by Finance Act, 1897 (60 & 61 Vict. c. 24), s. 6 (1), to tramway cars and tramway carriages and their proprietors.

B. *Provisions relating to Light Railways.*

(1) Light Railways Act, 1896, s. 11 (and see the notes thereto), provides for the incorporation in the Order of all or any of the provisions of the Clauses Acts, defined for England by sect. 28 as the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, the Railways Clauses Act, 1863, and the Companies Clauses Acts, 1845 to 1889, and for Scotland by sect. 26 (7), subject to any exceptions or variations which the Order may make.

Chap. IV. It further provides for the application, if and so far as may be considered necessary, of the enactments mentioned in Sched. II. (see *post*, p. 524), which are enactments imposing obligations on railway companies with respect to the safety of the public and other matters.

By sect. 12 (and see the notes thereto) the Clauses Acts and the enactments enumerated in Sched. II. shall only apply so far as they are incorporated or applied by the Order. Subject to the above-mentioned provisions and to any special provisions in the Order, the general enactments relating to railways shall apply to light railways as if they were ordinary railways, but they are not to be deemed to be railways within Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79). But for this provision the general railway enactments might very well have been held not to apply (*a*).

(2) This will not prevent a light railway carriage from being subject to the Stage Carriage Acts, whether Railway Passenger Duty Act, 1842, so far as it relates to stage carriages, or any other, if and so far as such carriage is of such a character and used for such purposes that, like a tram-car, it can be regarded as a stage carriage (*b*).

(3) Light railways are expressly brought under Telegraph Act, 1878, by Light Railways Act, 1896, s. 25, whereby "Act of Parliament" in that Act is to include a Light Railway Order.

(4) They are expressly made subject to Workmen's Compensation Act, 1897, by sect. 7 (2) of that Act. As to this and as to their relation to Employers and Workmen Act, 1875, and Employers' Liability Act,

(*a*) See *Gorman v. Waterford and Limerick Railway Co.* [1900] 2 I. R. 341; *Clogher Valley Tramway Co., Ltd. v. R.* (1891), 30 L. R. I. 316; *Matson v. Baird* (1878), 3 A. C. 1082.

(*b*) See further, note (*h*) to sect. 34 of Tramways Act, 1870.

1880, see note (*h*) to Tramways Act, 1870, s. 55, *post*, Chap. IV.
p. 252.

(5) The general words of sect. 12 of Light Railways Act, 1896, referred to above (see the notes thereto), bring them within the enactments mentioned under heads (3), (4), (8), (9) and (10) of the provisions relating to tramways.

Finally, reference may perhaps be made here to the provisions of Regulation of Railways Act, 1868, ss. 27 to 29, whereby the Board of Trade may license the construction or working of any authorised railway or part of a railway as a light railway under such conditions and regulations as they may think fit to impose. These provisions have had little practical effect. By Light Railways Act, 1896, s. 13, the same result may now be attained by means of a Light Railway Order. The matter is discussed in the notes to that section.

Part II.

TRAMWAYS.

THE TRAMWAYS ACT, 1870.

(33 & 34 Vict. c. 78.)

An Act to facilitate the construction and to regulate the working of Tramways.

[9th August, 1870.]

[To lay down a tramway in a public way without statutory authority is an indictable nuisance. In *R. v. Train* (1862), 2 B. & S. 640; 31 L. J. M. C. 169, this was held in the case of such a tramway laid down under contract with a vestry, and it was also held that public convenience was no defence to the indictment. The Court also refused to accept an ingenious argument that laying down a tramway was a method of paving, and so within the vestry's powers. In *R. v. Morris* (1830), 1 B. & Ad. 441; 9 L. J. (O. S.) K. B. 55, public convenience was held to be no justification in a similar case. *R. v. Charlesworth* (1851), 16 Q. B. 1012; 3 Cox, C. C. 174, was a case of successful indictment for laying down a tramway without the consent of turnpike trustees, which was necessary by statute.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The Preamble was repealed by S. L. R. (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Preliminary.

1. This Act may be cited for all purposes as “The Tramways Act, 1870.” Short title.

2. This Act shall not extend to Ireland.

Limitation
of Act.

The Acts which are now applicable to tramways and light railways in Ireland are cited as the Tramways (Ireland) Acts, 1860 to

Sect. 2. 1900, by virtue of Tramways (Ireland) Act, 1900 (63 & 64 Vict. c. 60), s. 4, and are as follows:—

Tramways (Ireland) Act, 1860 (23 & 24 Vict. c. 152).
 Tramways (Ireland) Amendment Act, 1861 (24 & 25 Vict. c. 102).
 Tramways (Ireland) Amendment Act, 1871 (34 & 35 Vict. c. 114).
 Tramways (Ireland) Amendment (Dublin) Act, 1876 (39 & 40 Vict. c. 65).
 Tramways (Ireland) Amendment Act, 1881 (44 & 45 Vict. c. 17).
 Tramways and Public Companies (Ireland) Act, 1883 (46 & 47 Vict. c. 43).
 Light Railways (Ireland) Act, 1889 (52 & 53 Vict. c. 66).
 Railways (Ireland) Act, 1890 (53 & 54 Vict. c. 52).
 Transfer of Railways (Ireland) Act, 1890 (54 & 55 Vict. c. 2).
 Tramways (Ireland) Amendment Act, 1891 (54 & 55 Vict. c. 42).
 Light Railways (Ireland) Act, 1893 (56 & 57 Vict. c. 50).
 Tramways (Ireland) Act, 1895 (58 & 59 Vict. c. 20).
 Railways (Ireland) Act, 1896 (59 & 60 Vict. c. 34).
 Tramways (Ireland) Act, 1900 (63 & 64 Vict. c. 60).

The titles are given by Short Titles Act, 1896 (59 & 60 Vict. c. 14), which, however, wrongly omits Light Railways (Ireland) Act, 1893. Tramways and Public Companies (Ireland) Act, 1883, Amendment Act, 1884 (48 & 49 Vict. c. 5), is omitted in the above list because it does not affect that part of Tramways and Public Companies (Ireland) Act, 1883, which deals with tramways.

Add Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), ss. 92, 93, 105, and Sched. V.

Interpreta-
tion of
terms.

3. For the purposes of this Act the terms herein-after mentioned shall have the meanings hereinafter assigned to them (*a*); that is to say,

The terms “local authority” and “local rate” shall mean respectively the bodies of persons and rate named in the table in Part One of the schedule (A.) to this Act annexed (*b*):

The term “road” (*c*) shall mean any carriage-way (*d*) being a public highway, and the carriageway of any bridge forming part of or leading to the same:

The term “road authority” shall mean, in the districts specified in the table in Part Two of the schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as

defined by this Act is vested, or who have the power to maintain or repair such road (*e*):

The term “district,” in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority:

The term “prescribed” shall mean prescribed by any rules made in pursuance of this Act (*f*):

The term “the Lands Clauses Acts” means, so far as the Provisional Order in which that term is used relates to England, The Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, The Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Lands Clauses Consolidation Acts Amendment Act, 1860 (*g*):

The term “two justices” shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district (*h*).

(*a*) See also Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(*b*) See the notes to Sched. A., *post*.

(*c*) Compare the definition of “street” in Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4, as to which Lord Selborne said: “An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word, as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable” (*Robinson v. Barton-Eccles Local Board* (1883), 8 A. C. 798, 801; 53 L. J. Ch. 226, 227; compare *Doe d. Edney v. Benham* (1845), 7 Q. B. 976, 977, per Patteson, J.); and see the numerous cases on that section collected in Lumley’s Public Health, 6th ed., pp. 12 *sqq*. No question arises on the present section as to whether “road” means the roadway as distinguished from the roadway with the houses; it clearly does. See also note (*o*) to sect. 26. The word “street” is not used in the Act, though it is used in the Board of Trade Rules, *e.g.* in Rule IV. As to its meaning for the purposes of Standing Order 135, see *ante*, p. 24.

(*d*) “Carriageway” is used here to mean the roadway as opposed to the footpaths adjoining it. (*Hyde Corporation v. Oldham, Ashton and Hyde Electric Tramway, Ltd.* (1900), 64 J. P. 596; 16 T. L. R.

Sect. 3. 492, for which see note (o) to sect. 26, and not in the strict sense described in *Glen on Highways*, 2nd ed., pp. 3 and 4. Contrast also *Derby County Council v. Matlock Bath Urban District Council*, [1896] A. C. 315; 65 L. J. Q. B. 419; and see *Goldberg v. Liverpool Corporation* (1900), 82 L. T. 362 (C. A.), *post*, p. 228.)

(e) In *Wolverhampton Tramways Co. v. Great Western Railway Co.* (1886), 56 L. J. Q. B. 190; 56 L. T. 892, a railway company, which was under an obligation to repair a bridge over which a tramway ran under statutory powers, found it necessary in the interests of the public safety to repair the bridge, and did so, with the approval of the local authorities in whom the road was vested, after giving the tramway company notice under sect. 32 of this Act. They took up the tramway, and did not restore it. It was held that the railway company were the "road authority" under this section, and were protected against any claims of the tramway company by sect. 32 (3) of this Act, except in so far as they had caused unnecessary detriment or inconvenience, if any, in the words of sect. 32 (1). *Seem*, the taking up of the rails would be deemed a necessary inconvenience.

In *Stockport and Hyde Highway Board v. Cheshire County Council* (1891), 61 L. J. Q. B. 22; 65 L. T. 85; 39 W. R. 606; 55 J. P. 808, the county council was held, by virtue of Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11, to be the "road authority" within the meaning of a tramways Provisional Order, and as such entitled to the surplus material excavated in the construction of a line, although they had handed over the repair of the road to the highway board by agreement for a year.

It would seem to follow logically, and from the *Wolverhampton* case, that a person liable to repair a highway *ratione tenuræ* or *clausuræ* was a "road authority" within the meaning of this section, in spite of the inappropriateness of the definition of the term "district" in this section to such a person. It was equally inappropriate as applied to the Great Western Railway Company in the *Wolverhampton* case.

The road authorities will be, as a rule, in boroughs or urban districts, the borough council or urban district council (Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 144, and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21); with respect to main roads the county council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11); and in rural districts the rural district council (Local Government Act, 1894, s. 25).

(f) Rules may be made under sect. 64 for the purposes set out in that section. Those at present in force will be found printed *post*, p. 324. Contrast the "regulations" and "by-laws" made by local authorities and promoters under sect. 46.

(g) The Lands Clauses Acts at present in force are those named in the section (*viz.*, 8 & 9 Vict. c. 18; 8 & 9 Vict. c. 19; and 23 &

24 Vict. c. 106), with the addition, as regards England and Wales, of Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18), which, as amended, only refers to lands in Westminster, Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), and Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11); but it is to be remarked that the present section, unlike Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23, does not contain the words "and any Acts for the time being in force amending the same." It is curious, too, that the 1869 Act is omitted.

Sect. 3.

(*h*) By Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 33 and 34, any one of the magistrates of the metropolitan police courts, and every stipendiary magistrate for any county, borough or place, shall have power to do alone whatever is authorised by the Act to be done by one or more justices, and the Lord Mayor or any alderman of London, sitting at the Mansion House or Guildhall, may alone do any act which by any law then in force, or by any law not containing an express enactment to the contrary thereafter to be made, is directed to be done by more than one justice. By Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 14, and by Stipendiary Magistrates Act, 1858 (21 & 22 Vict. c. 73), s. 1, metropolitan magistrates (except at special or petty or quarter sessions) and stipendiary magistrates may do alone anything which by any law then in force, or any subsequent law not containing an express enactment to the contrary, is to be done by more than one justice. By Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 54, sects. 33 and 34 of Summary Jurisdiction Act, 1848, are not to apply to or restrict the operation of that Act.

PART I.

Provisional Orders authorising the Construction of Tramways.

4. Provisional Orders(*i*) authorising the construction of tramways in any district may be obtained(*k*) by—

(1.) The local authority(*l*) of such district(*l*): or by—

(2.) Any person, persons, corporation, or company, with the consent of the local authority of such district; or of the road authority(*m*) of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts"(*n*)(*o*):

By whom
Provisional
Orders au-
thorising the
construction
of tramways
may be ob-
tained.

Sect. 4. And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as “the promoters” (*p*).

Application for a Provisional Order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the Schedule (A.) to this Act annexed (*q*).

Where in any district there is a road authority (*m*) distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any Provisional Order can be obtained (*r*).

(*i*) Whether promoters proceed by Provisional Order or by special Act will generally depend on the amount and the nature of the opposition to their scheme. If it is such that opposition, under sect. 14, to the Confirmation Act is to be expected, it will be shorter and no more expensive to proceed by special Act; if it is such that it can be readily dealt with by the Board of Trade, then procedure by Provisional Order is preferable.

(*k*) Provisional Orders may be revoked, amended or extended under sect. 16. This section ought to contain some reference to the Board of Trade, which is first mentioned in connection with a subsidiary matter in sect. 5.

(*l*) Defined in sect. 3.

(*m*) See the definition of “road authority” in sect. 3 and note (*e*) to that section.

(*n*) The provisions as to the formation and alteration of highway districts are found in Highway Act, 1862 (25 & 26 Vict. c. 61), ss. 5 to 8 and s. 39, and Highway Act, 1864 (27 & 28 Vict. c. 101), ss. 4 to 17. Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 3, provides that the highway districts shall be formed so as to be as far as possible coincident in area with or contained in rural sanitary districts; and by sects. 4 and 5 the rural sanitary authority of a district so formed may apply to the county authority to be allowed to exercise the powers of a highway board, and, if their application is granted, all the property, powers, &c., of the highway board vest in them. The provisions of Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25, transferring to rural district councils all the powers and duties of any highway authority in their district, subject to the power of the county council to postpone the operation of the

section, have rendered the above-mentioned provisions of the Sect. 4. Highways Acts practically obsolete.

(o) The Board of Trade Rules I. and II. (pp. 324—5) deal with these consents, and by Rule XV. a complete list of the local and road authorities is to be deposited at the Board of Trade. Rule VII. provides for the service of notices on local and road authorities where application is made for extension of time or for authority to abandon. Standing Order 22 (*post*, p. 387) extends provisions similar to those of this section to Bills for the construction of tramways, adding that in a rural district in England the rural district council shall be deemed to be the local authority. In the case of the *Tramways Orders (No. 3) (Woolwich and South-East London) Bill* (1883), 3 Cl. & R. 360, the Referees held that the Committee had no power to determine whether the grant of a Provisional Order was *ultra vires*, the Board of Trade having relied on the promoters' statement that the consent of a local authority, which had not been given, was unnecessary. They thought that that was a question which ought to be raised before the House itself on second reading or committal.

Now, by Standing Order (H. L.) 22 (*post*, p. 387), all these consents have to be obtained before January 18. The Standing Orders Committee may dispense with particular consents under proper circumstances, just as they may dispense with compliance with other Standing Orders.

Where consents are obtained on terms, the terms may be embodied, in the case of a Bill, in clauses or in a scheduled agreement. In the case of a Provisional Order, the Board of Trade will embody in the Order such of the terms as it thinks desirable, and leave the remainder to be enforced by an ordinary unconfirmed agreement.

As to two-thirds consent, see next section.

A local authority made an agreement with an individual that they should call on him to apply for powers to make a certain tramway when they deemed such tramway necessary, and that he, if he obtained such powers, should pay them certain wayleaves for the use of the tramway. They also agreed that they would not consent to the application by anyone else for such powers without first calling upon the other party to the agreement to apply for the powers. This agreement was held to be *intra vires* of the local authority. (*Attorney-General v. Hastings Corporation* (1902), 19 T. L. R. 9.)

(p) See also sect. 24 and notes thereto.

(q) And see Board of Trade Rule I., *post*, p. 324. By sect. 17 several local authorities may make a joint application.

(r) The Board of Trade's powers as to Provisional Orders are preserved for Scotland by Private Legislation Procedure (Scotland)

Sect. 4.

Act, 1899 (62 & 63 Vict. c. 47), s. 16 (2), as to the scope of which see *Falkirk and District Tramways* (1901), 38 S. L. R. 863.

The Board of Trade may in certain cases dispense with the consent of local or road authority.

5. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade (*s*) may, nevertheless, make a Provisional Order authorising the construction of such tramway if they are satisfied, after inquiry (*t*), that two thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order (*u*).

(*s*) That is "The Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations." (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (8).)

(*t*) The provisions as to the holding of inquiries are given in sect. 63. But the words of this section do not compel the Board of Trade to hold a formal inquiry under that section; they may inquire and satisfy themselves as they please. Compare sect. 7.

(*u*) Standing Order 22 extends provisions similar to these to special tramway Bills, and it has been decided that a local authority, whose consent has been dispensed with under that Standing Order, is not thereby precluded from being heard against the Bill. (*Glasgow Corporation Tramways Bill* (1878), 2 Cl. & R. 95: see *ante*, p. 33.) It is probable, however, that a local authority, with whose consent the Board thought fit to dispense after due consideration of the facts, would have little chance of success in the Committee Rooms. But it has happened occasionally, however, that the Board has allowed an Order to go forward for the purpose of having the grounds of opposition of a recalcitrant local authority thrashed out in Committee on the Confirmation Bill. Generally, the Board is unwilling to dispense with consents under this section where local or road authorities have jurisdiction over any substantial portion of the proposed route, or where they have any real grounds for objection; or, if it dispenses with their consents, it will do so only upon conditions imposed on the promoters for the dissentients' protection.

6. The promoters(*x*) intending to make an application for a Provisional Order shall proceed as follows(*y*):—

Sect. 6.

Notices and deposit of documents by promoters as in schedule.

- (1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement(*z*); and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the Standing Orders (if any) of both Houses of Parliament for the time being in force with respect to Bills for the construction of tramways(*a*):
- (2.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same schedule, according to the regulations therein contained(*b*):
- (3.) On or before the twenty-third day of December in the same year they shall deposit the documents prescribed in Part Three of the same schedule, according to the regulations therein contained(*c*):

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled “An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament;” and all the provisions of that Act shall apply accordingly(*d*).

(*x*) See sects. 4 and 24.

Sect. 6.

(y) The following provisions were, in a particular case, modified by statute (Metropolitan Tramways Provisional Orders Suspension Act, 1871 (34 & 35 Vict. c. 69)).

(z) The Act omits here, presumably by inadvertence, some such words as "according to the regulations contained in Part One of the schedule (B.) to this Act" (compare the wording of sect. 13). If these are not inserted there is nothing for the words "the same schedule," in sub-sects. 2 and 3, to refer to. For the prescribed method of advertisement see Board of Trade Rules III., IV. and V. (pp. 325—6). The corresponding Standing Orders which apply to advertisements of proposed tramway Bills are Standing Orders 3, 4, 6, 9 and 10 (pp. 383—6).

(a) The appropriate Standing Orders, which will be found printed below at p. 386, is Standing Order 13 (H. L. 13 and 13a). It must be noted that the House of Lords Standing Order 13, unlike the corresponding Standing Order of the House of Commons, does not require notice to be given to the occupiers of houses, &c. abutting. The Board of Trade Rules dealing with advertisements and notices are Rules VI. to IX. (pp. 326—7).

(b) The appropriate Board of Trade Rules are Rules X. to XIV. (pp. 327—9); by Rule XIV., Standing Orders 39 of the Lords and Commons respectively (p. 392), relating to deposit in duplicate, are to be observed. Compare Standing Orders 24 to 31.

(c) Board of Trade Rule XV. (p. 329) adds various documents which have to be deposited as well as those enumerated in Part III. of Sched. B. Compare Standing Orders 32 to 37 of the two Houses respectively.

(d) Now, by Short Titles Act, 1896 (59 & 60 Vict. c. 14), cited as the Parliamentary Documents Deposit Act, 1837 (7 Will. 4 & 1 Vict. c. 83). In that Act for "clerk of the peace" read now clerk of the county council, by Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 83 (6), and for "parish clerk" the clerk, or, if there be none, the chairman, of the parish council, by Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 17 (7).

Power for
Board of
Trade to
determine
on applica-
tion and on
objection.

7. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry (e) in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint (f), and shall determine whether or not the promoters (g) may proceed with the application (h).

(e) If a formal inquiry is held, it will be governed by sect. 63.

(*f*) As to the lodging of objections, see Rules VIII., IX. and XVI. (6). By the last-mentioned rule the objectors must send copies of their objections to the promoters. Sect. 7.

(*g*) See sects. 4 and 24.

(*h*) The sort of objections and matters which have to be considered by the Board of Trade's officer, who makes a report after individual investigation or after holding a formal inquiry, will be found in notes (*d*) to sect. 1 and (*y*) to sect. 7 of Light Railways Act, 1896. The objections there detailed, so far as applicable to light railways of Class B (*i.e.*, light railways constructed along public roads), and so far as not based on the special provisions of the Light Railways Act, are equally applicable to tramways. The Board will then modify or reject the proposed Order, or grant it subject to conditions, after consideration of the objections duly lodged with them and the report of their officer, or, if there be no inquiry, formal or otherwise, after consideration of the objections; see next section.

8. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a Provisional Order accordingly (*i*). Power for Board of Trade to make Provisional Order.

Every such Provisional Order shall empower the promoters (*k*) therein specified to make the tramway upon the gauge (*l*) and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case, think fit to submit to Parliament for confirmation in manner provided by this Act (*m*); but so that any such Provisional Order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement (*n*), or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road (*o*), or upon land taken by agreement (*p*). Form and contents of Provisional Order.

(*i*) Board of Trade Rule XVI. (p. 331) deals with their require-

Sect. 8. ments as to the draft Provisional Order. As to conditional grants compare note (*y*) to sect. 7 of Light Railways Act, 1896.

(*k*) See sects. 4 and 24.

(*l*) By sect. 25, if no gauge is prescribed by the special Act, the gauge is to be the standard railway gauge of four feet eight and a half inches.

(*m*) A model Order containing the usual clauses will be found *post*, p. 424. Compare also the model Order for light railways constructed on public roads, *post*, p. 586.

(*n*) So, by sect. 15, the provisions of the Lands Clauses Acts with respect to the purchase or taking of lands otherwise than by agreement are forbidden to be incorporated in any Provisional Order.

(*o*) Defined in sect. 3.

(*p*) See further as to this limitation sect. 15 and note (*g*) thereto.

Regulations
as to con-
struction of
tramways in
towns.

9. Every tramway in a town (*q*) which is hereafter authorised by Provisional Order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorised by any Provisional Order to be so laid that for a distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway (*r*) if one third of the owners or one third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid (*s*) shall in the prescribed (*t*) manner and at the prescribed time express their dissent from any tramway being so laid (*u*).

(*q*) Compare the use of "town" in Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 93, 128, and Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 11, 15. A line of cases on these sections or on similar sections in local Acts—viz. *Elliott v. South Devon Railway Co.* (1848), 2 Ex. 725; 17 L. J. Ex. 262; *R. v. Cottle* (1851), 16 Q. B. 412; 20 L. J. M. C. 162; and *Milton-next-Sittingbourne Commissioners v. Faversham District Highway Board* (1867), 10 B. & S. 548n—was summed up by the definition given by Lord Hatherley, L. C., in *London and South Western Railway Co. v. Blackmore* (1870), L. R. 4 H. L. 610, at p. 615; 39 L. J. Ch. 713, at p. 715: "Where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living as it were in the same town or place continuously, there—for the purposes

of the Railway Acts, and according to the popular sense of the word, and not the legal sense of the word, which would not give at all a sensible definition—the place may be said to be a town.” Compare also *Collier v. Worth* (1876), 1 Ex. D. 464. If the circumstances do not fulfil the above definition, it does not matter that the place happens to be situated within the physical limits of a town or borough. (*Coventry v. London, Brighton and South Coast Railway Co.* (1867), L. R. 5 Eq. 104; 37 L. J. Ch. 90; *Carington v. Wycombe Railway Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213.)

Sect. 9.

(r) Compare Board of Trade Rules IV. and XV. (4) pp. 325, 330), which contain a further provision for cases where railway vehicles are to be used. How if there be no footpath? Does the section apply at all? And how if there be a footpath, but it be interrupted at some point by the junction of another road? This might prevent the rail from being less than 9 ft. 6 in. from the “footpath” for 30 ft. or upwards. The provision would cover a siding apparently as well as a main line. (See *Prahran Corporation v. Melbourne Tramway Trust* (1888), 14 Vict. L. R. 952.)

(s) See the discussion of the *locus standi* of frontagers under Standing Order 135 (*ante*, p. 21), noting that the words of the Standing Order, unlike those of this section, are “owner, lessee or occupier of any house, shop or warehouse in any street through which it is proposed to construct any tramway.” Standing Order 13 makes special provision for the class of frontagers contemplated by the present section (see note (u) below). There are no cases dealing with the meaning of the words “abutting upon” here, but it is submitted that they must be intended to include only a very limited class of persons—those whose houses, shops or warehouses (which words would not include land not built upon) are in actual physical contact with the part of the road affected, or with the footpaths adjoining it, if there are footpaths (as the Act seems to assume). Such persons alone could be really affected by the distance of the rail from the footpath, and of these, persons whose premises abutted on the side to which the rail was nearest would be far more nearly affected than those whose premises were on the opposite side. The wording of the section seems, however, to cover both classes, and it is so interpreted in Board of Trade Rule IX. (*post*, p. 327). Where, however, “premises” was used in a similar section of a special Act, it was held to include a promenade. (*Bideford Urban District Council v. Bideford, &c. Railway Co.* (1903), “Times” Newspaper, July 9.)

The section which most nearly approaches the wording of the present section is Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77: “The owners of the land bounding or abutting on such street.” Under that Act a railway cutting (*London and North Western Railway Co. v. St. Pancras Vestry* (1868), 17 L. T. 654) and a garden (*Paddington Vestry v. Bram-*

Sect. 9.

well (1880), 44 J. P. 815), neither of which had any communication with the street in question, were held to come within the section; so a strip of land four inches wide, which was only used for keeping up a fence under a covenant. (*Williams v. Wandsworth Board of Works* (1881), 13 Q. B. D. 211; 53 L. J. M. C. 187.) A railway embankment and a strip of land between it and the street have both been held to "bound and abut" (*Higgins v. Harding* (1872), L. R. 8 Q. B. 7; 42 L. J. M. C. 31); but not a railway over which the street was carried by a bridge. (*Great Eastern Railway Co. v. Hackney Board of Works* (1883), 8 A. C. 687; 52 L. J. M. C. 105.) The soil of private roads leading out of the street "bounds and abuts." (*Pound v. Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; 41 L. J. M. C. 51.) In Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 105, the words are "the owners of the houses forming such street," and on these words there is the rather remarkable decision that a building standing some seventy feet from the street and separated from it by a row of houses, but having a communication with the street by a passage, was a house forming the street. (*London School Board v. Vestry of St. Mary, Islington* (1875), 1 Q. B. D. 65; 45 L. J. M. C. 1, which followed *Baddeley v. Giggell* (1847), 1 Ex. 319.)

The words of Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150, are "the owners or occupiers of the premises fronting, adjoining or abutting on" the street, and cases on these words will not be very applicable to the present section. The following may be referred to: *R. v. Newport Local Board* (1863), 3 B. & S. 341; 32 L. J. M. C. 97; *Wakefield Local Board v. Lee* (1876), 1 Ex. D. 336; *Newport Urban Sanitary Authority v. Graham* (1882), 9 Q. B. D. 183; *Lightbound v. Higher Bebington Local Board* (1885), 16 Q. B. D. 577; 55 L. J. M. C. 94. More valuable for the present purpose are some Scotch cases on the words "fronting and abutting" in various Acts. Property was held not to "front and abut" if it was separated from the street by the site of an old wall which belonged to someone other than the owner of the property (*Leith Magistrates v. Gibb* (1882), 9 R. 627); but *secus* if there is a possibility of access, though no access in fact. (*Campbell v. Edinburgh Magistrates* (1891), 19 R. 159; *Caledonian Railway Co. v. Edinburgh Magistrates* (1901), 3 F. 645.) Lastly, for a case on the words "lying alongside or adjoining" in a local Act, see *Manchester Corporation v. Chapman* (1868), 37 L. J. M. C. 173; 18 L. T. (N. S.) 640; 16 W. R. 974; 32 J. P. 582.

(*t*) *L.e.*, by rules made under sect. 64 of the Act (sect. 3). The appropriate rule is Board of Trade Rule IX. (p. 327).

(*u*) In the case of tramway Bills Standing Order 13, *post*, p. 386, provides for notice to be given—where there will be a space of less than 9 ft. 6 in., or of 10 ft. 6 in. if it is intended to run railway carriages or trucks on the railway, for 30 ft. or upwards—to the

owners or reputed owners, lessees or reputed lessees [and occupiers] (omitted in the Lords Order) of all houses, shops or warehouses abutting on the part of the street or road affected.

If no such dissent has been so expressed, an Order dispensing with the space of 9 ft. 6 in. is perfectly good. (*Edinburgh Street Tramways Co. v. Black* (1873), L. R. 2 H. L. Sc. 336, 345 per Lord Hatherley); 11 M. (H. L.) 57, 61; Paterson, 2068, 2072, reversing the Lord Ordinary and the First Division of the Inner House (1873), 11 M. 418.) In this case the facts were as follows:—The Edinburgh Tramways Company were authorised by their special Act to lay a double line of tramways in the street known as the North Bridge, which in its widest part was not broad enough to allow of a space of 9 ft. 6 in. between the kerb and the rail. The special Act incorporated Parts II. and III. of the present Act, but not Part I., and the only way in which that Part might be said to be incorporated was through the confirmation by sect. 44 of the special Act of an agreement made between the local authority and the promoters, which provided, *inter alia*, that all the provisions of the present Act were to apply as fully as if the special Act had been a Provisional Order obtained under the present Act. The frontagers having applied for and obtained an interdict against the construction of any line of tramway within the 9 ft. 6 in. limit, the interdict was recalled by the House of Lords on appeal, and it was held that the special Act required the tramway to be constructed in accordance with the deposited plans and sections, and that, whatever the effect of the agreement was, it could not override this obligation.

It was previously decided upon the same Act that two private individuals (who were, in fact, omnibus and cab proprietors) had a right to complain of a violation by the tramway company of a section which provided that where there was a double line, and a space of less than 9 ft. 6 in. was left between the nearest rail and the footpath, the company should construct a cross-over road connecting one line with the other, and that the existence of provisions for reference in the Act and in an agreement scheduled thereto, and sect. 33 of Tramways Act, 1870, did not affect this right. (*Adamson v. Edinburgh Street Tramways Co.* (1872), 10 M. 533.)

A similar provision as to cross-over roads will be found in the model Order, *post*, p. 430. It also contains a provision that the 9 ft. 6 in. rule shall apply to cross-over roads, passing-places, sidings, &c. in general.

Under such a provision and another section similar to sect. 6 (a) of the model Order, *post*, it was held that promoters had no right to make a connecting line not shown on the deposited plans and less than 9 ft. 6 in. from the outside of the footpath, and they were ordered to remove the line. (*Wilkinson and Marshall v. Newcastle-upon-Tyne Corporation* (1902), 18 T. L. R. 332.)

Sect. 9.

In the Court of Appeal at Montreal it has been held that a street railway company, authorised by statute to use or occupy any part or such parts of certain highways as may be required for their purposes, exceeds its powers by laying the track at the side of the highways within 6 ft. of the adjoining property, the value of which is thereby greatly diminished; that the right of passage given to the company should be exercised *ex aequo et bono* and in accordance with the use and destination of the highway, and so as to cause as little inconvenience as is compatible with the exercise of the right to the public and the adjoining proprietors. (*Ross (A.-G.) v. Montreal City Passenger Railway Co.* (1879), 24 Lower Canada Jurist, 60; 10 *Revue Légale*, 27; 2 *Legal Notes*, 338.)

Nature of traffic on tramway and tolls to be specified in Provisional Order.

10. Every such Provisional Order shall specify the nature of the traffic (*x*) for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters (*y*) in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper (*z*).

(*x*) The word "traffic" is general, and promoters are therefore at liberty to carry not only passengers but also goods and merchandise of all descriptions on terms approved by the Board of Trade.

For the conveyance of mails by tramways see Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38), *post*, p. 304. It has been held in Ireland that a steam tramway authorised by a Provisional Order under the Tramways (Ireland) Act, 1860, confirmed by a special Act, was not a "railway" within the meaning of the Post Office (Parcels) Act, 1882 (45 & 46 Vict. c. 74), and that the conveyance of post office parcels and mails upon it was regulated solely by the special Act. (*Clogher Valley Tramway Co., Ltd. v. R.* (1891), 30 L. R. I. 316.)

(*y*) See sects. 4 and 24.

(*z*) The model Order contains clauses and a schedule regulating the amount of tolls to be taken for passengers, animals and goods, the allowance of passengers' luggage, cheap fares for workmen, and the periodical revision of tolls (*post*, p. 440). Compare Light Railways Act, 1896, s. 11 (*j*), and notes thereto, and the model Light Railway Order, *post*, p. 618.

There is a tendency to utilise tramways in the future to a greater extent for the carriage of goods. This may lead to modifications in the scale of tolls usually prescribed, and to additional regulations, *e.g.*, against undue preference, as to which there is at present, in the case of tramways, no legal provision. See further as to tolls and charges, sect. 45 and the notes thereto.

11. The costs of and connected with the preparation and making of each Provisional Order (*a*) shall be paid by the promoters (*b*), and the Board of Trade may require the promoters to give security for such costs before they proceed with the Provisional Order (*c*). **Sect. 11.**
Costs of
Order.

(*a*) These costs are to be taxed on the Chancery, not on the Parliamentary scale, inasmuch as the Act confirming the Provisional Order is procured by the Board of Trade and not by the promoters, and there is no proceeding in Parliament with which the promoters have really anything to do directly. (*In re Morley* (1875), L. R. 20 Eq. 17.) For a discussion of the position of persons claiming costs against company or promoters in connection with a special Act, see note (*f*) to sect. 24.

(*b*) See sects. 4 and 24. Sect. 20 provides for the raising of costs and expenses where a local authority are the promoters.

(*c*) Compare Board of Trade Rule XV. (7), p. 331.

12. After a Provisional Order is ready, and before the same is delivered by the Board of Trade, the promoters (*d*), unless they are a local authority, shall within the prescribed (*e*) time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum (*f*) on the amount of the estimate by the promoters (*d*) of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money (*g*). Promoters
to deposit
47. per cent.
on estimate
in estimate
bank.

(*d*) See sects. 4 and 24.

(*e*) By the Board of Trade Rules (sect. 3). The appropriate rules are—XX. (amount and method of deposit),

XXI. (penalty for non-completion of tramways where no deposit),

XXII. (application of deposit),

XXIII. (release of deposit), and

XXIV. (miscellaneous).

(*f*) By Rule XXI. promoters who are possessed of a tramway already open for public traffic, and which has during the previous year paid dividends on its ordinary share capital, need not make a

Sect. 12. deposit. By Rule XX. promoters (unless they are a local authority) shall, if they are not possessed of such a tramway, pay a deposit of not less than *five* per cent. of the estimate. Compare Standing Order 57, *post*, p. 395.

(*g*) Under the old Board of Trade Rules, where the line was not completed and opened within the due time, the deposit, or the penalty where there was no deposit, was to be applied in compensating road authorities as the Court might think fit, and the balance was to be forfeited to the Crown, or, at the discretion of the Court, if the promoters were a company which was being wound up or was under a receiver, might be wholly or in part paid to the liquidator or receiver, or be otherwise applied as assets of the company for the benefit of the creditors. It was held that the intention of the rules was (1) that the promoters were not by any subterfuge or device to get the deposit money back again, either directly or indirectly, if the tramway was not completed; (2) that the creditors only were to be considered and not the shareholders; (3) that the only creditors who were to be considered were meritorious creditors, that is, persons who were not responsible for what had happened in any shape or way. If there were no such creditors, and so far as the money was not paid to road authorities, the deposit, or the balance of the deposit, was forfeited to the Crown, in one sense as a fine, and in another sense as a compensation to the public for the injury done to it by the non-completion of the tramway. (*In re Lowestoft, Yarmouth and Southwold Tramways Co.* (1877), 6 Ch. D. 484; 46 L. J. Ch. 393.) This case followed in part *In re Bradford Tramways Co.* (1876), 4 Ch. D. 18; 46 L. J. Ch. 89 (C. A.), which was a case under a section of a special Act couched in terms similar to those of the Rules, and decided that no part of the deposit could be applied as assets of the company for the payment of creditors until any funds arising from calls on the shareholders were exhausted. *In re Lowestoft, Yarmouth and Southwold Tramways Co., Ltd., ub. sup.*, was followed, as to meritorious and non-meritorious creditors, in *In re Birmingham and Lichfield Junction Railway Co.* (1885), 28 Ch. D. 652; 54 L. J. Ch. 580.

In *In re West Donegal Railway Co.* (1890), 24 Ir. L. T. R. 42, it was held that the completion of a light railway under a subsequent Light Railway Order did not prevent the forfeiture of a deposit made in respect of it under a previous Act, it not having been completed under that Act.

See also *In re London and County Tramways Co., Ltd.* (1875), W. N. 49; L. J. Notes of Cases, 39; and *In re Tynemouth Borough Tramway Co., Ltd.* (1875), 33 L. T. 8. In the latter case the Court, in its discretion under the old Tramways Rule XXVI., ordered the deposit to be paid to the official liquidator for the benefit of the creditors, though there was uncalled capital which exceeded the amount of the debts. A similar order was made where

there was no uncalled capital in *In re Common Road Conveyance Co., Ltd.* (not reported). **Sect. 12.**

The matter is now governed by Parliamentary Deposits and Bonds Act, 1892 (55 & 56 Vict. c. 27), to which the terms of the Board of Trade Rules now in force conform, and which is set out, with notes of the decisions upon it, *post*, p. 297.

13. When a Provisional Order has been made as aforesaid and delivered to the promoters (*h*), the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part Four of the schedule (B.) to this Act (*i*). Publication of Provisional Order as in schedule.

(*h*) See sects. 4 and 24.

(*i*) See Board of Trade Rule XIX. (p. 333). By Rule XVIII. (p. 332), if any alteration of the deposited plan and section has been made with the approval of the Board of Trade before the Order is granted, a copy showing the alteration must be deposited before the Order is introduced into a Confirmation Bill.

14. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid (*k*), the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a Bill to be introduced into either House of Parliament in relation to any Provisional Order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill; and until confirmation, with or without amendment, by Act of Parliament, a Provisional Order under this Act shall not have any operation (*l*). Confirmation of Provisional Order by Act of Parliament.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the Order petitioned against, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act (*m*).

Sect. 14. The Act of Parliament confirming a Provisional Order under this Act shall be deemed a Public General Act (*n*).

(*k*) The proofs required are prescribed by Board of Trade Rule XIX. (p. 333), which also prescribes proof of the deposit of amended plans and sections made under Rule XVIII. The form of proof will be found *post*, p. 350.

(*l*) Contrast the provisions of Light Railways Act, 1896, s. 10 (*post*, p. 477). "The Board of Trade may confirm the Order . . . and an Order so confirmed shall have effect as if enacted by Parliament." Compare and contrast also the provisions of sects. 10 and 11 of Military Tramways Act, 1887 (*post*, pp. 291, 293).

(*m*) See the discussion of *locus standi* against tramway Bills (*ante*, pp. 12 *sqq.*), where many instances will be found of such oppositions. Opponents have thus a double opportunity of opposing—in the first place by objections under sect. 7, and in the second place by opposition before the Committees of either House.

The costs of opposing any "local or personal Bills" in Parliament may be paid, in the case of borough councils and other bodies acting under any general or local Acts of Parliament for the management of any places or districts, out of the public funds or rates under their control, by Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91), which is extended to county councils in England by Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 15, and in Scotland by Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 56, and to metropolitan boroughs by London Government Act, 1899 (62 & 63 Vict. c. 14), s. 6 (6). It seems doubtful whether "local and personal Bills" covers Bills for confirming tramway Provisional Orders: see the concluding sentence of the present section, sect. 10 of the Municipal Corporations (Borough Funds) Act, 1872, and the fact that it was thought necessary to pass the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 & 55 Vict. c. 12), to remove a similar doubt which existed with regard to Bills for confirming Provisional Orders under Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 24. Compare also Light Railways Act, 1896, s. 16.

Committees on Bills for confirming Provisional Orders are given powers to award costs and examine witnesses by Parliamentary Costs Act, 1871 (34 & 35 Vict. c. 3) (for title, see Short Titles Act, 1896 (59 & 60 Vict. c. 14)), as amended by Parliamentary Witnesses Oaths Act, 1871 (34 & 35 Vict. c. 83).

(*n*) *Semble*, as soon as the confirming Act is passed, the considerations and restrictions which formed the foundation of the Order are done away with, and it is immaterial whether it passed through its stages properly or improperly, the Court only looking

to the construction of the Order as confirmed by Parliament. **Sect. 14.**
(Edinburgh Street Tramways Co. v. Black (1873), L. R. 2 H. L. Sc. 336, 341.)

15. The provisions of the Lands Clauses Acts (*o*) shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted (*p*) by any such Provisional Order, and except as to the following provisions, namely,—

Incorporation
of general
Acts in
Provisional
Order.

- (1.) With respect to the purchase and taking of lands otherwise than by agreement (*q*):
- (2.) With respect to the entry upon lands by the promoters of the undertaking (*r*).

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act (*s*).

(*o*) See sect. 3 and note (*g*) thereto.

(*p*) These words do not mean that there must be variation or exception in express terms; such variation or exception must be taken to occur whenever the incorporated Act is inconsistent with and not applicable to the incorporating Act. (*Weld v. South Western Railway Co. (1863), 32 Beav. 340, 345; 33 L. J. Ch. 142, 144.*) Similar decisions on words, which were similar to but not the same as these, are: *R. v. St. Luke's, Chelsea, Vestry (1871), L. R. 7 Q. B. 148; 41 L. J. Q. B. 81 (C. A.);* and *Sharpe v. Metropolitan District Railway Co. (1880), 5 A. C. 425; 50 L. J. Q. B. 14.*

(*q*) These sections are sects. 16 to 68 (inclusive) of Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), as amended by Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15) (and see, as to taxation of costs, Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11); and, as to Scotland, sects. 17 to 66 (inclusive) of Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19)).

The words of the section exclude all the clauses under the heading specified, viz., sects. 16 to 68. (*Ferrar v. Commissioners of Sewers for London (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102; Dungey v. London Corporation (1869), 38 L. J. C. P. 298; R. v. London Corporation (1867), L. R. 2 Q. B. 292.*) But the addition of the word “exclusively” in an exception of “so much as relates exclusively to the purchase of land by compulsion” was held not to except sect. 68. (*Broadbent v. Imperial Gas Light Co. (1856), 7 De G. M. & G. 436, 447; 26 L. J. Ch. 276, 280.*)

Sect. 15.

Compare sect. 8, which also forbids the purchase of lands even by agreement except to the extent limited by the Provisional Order. See, however, as to the acquisition of lands by companies for the accommodation of persons of the working classes employed by them, Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 68. This section would include tramway companies, though, unlike railway, dock and harbour companies, they are not specifically mentioned. For a case where a tramway company, which was also authorised to execute local improvements, was given powers to acquire land compulsorily by their special Act, see *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425.

As to whether a local authority is entitled to use land vested in them as a public park for the purpose of road widening to facilitate the construction of a tramway under a Provisional Order, see *A.-G. v. Folkestone Corporation* (1903), "Times" Newspaper, April 29.

Contracts for the purchase of all the lands required must be produced at the time of proving compliance with the Act and Rules. (Board of Trade Rule XV. (5), p. 330.)

In the case of light railways constructed along public roads, compulsory powers are not seldom inserted.

(*r*) These sections are sects. 84 to 91 (inclusive) of Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), and sects. 83 to 89 (inclusive) of Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19). Apparently sect. 92 of the former Act would not be excluded. Though it comes within the fasciculus of sections headed "With respect to the entry upon lands by the promoters of the undertaking," it does not relate to this subject, and seems to be distinguished by being introduced by the words "And be it enacted." (Compare *Broadbent v. Imperial Gas Light Co.*, cited in note (*g*), *supra*.)

(*s*) There is no reason why a tramway company, subject to the provisions of sects. 8 and 15, should not acquire a right of laying tramways through land which they have not purchased. Such a right could not, perhaps, be strictly called an easement, but it would entitle the grantees to such secondary rights as were necessary for the full enjoyment of their primary right, just as though it were an easement appurtenant. In *Senhouse v. Christian* (1787), 1 T. R. 560, a grant of an easement in gross of a free and convenient way for the purpose of carrying coal was held to carry with it the right to lay a framed waggon-way. Compare *Earl of Antrim v. Dobbs* (1891), 30 L. R. I. 424. Further, a grant of a right to make a tramway would carry with it a right to make a tramway of a kind, or on which a species of motive power or other invention was used, which was not known or in use at the time of the grant, if the grant was not limited so as to exclude such an extended meaning of tramway. (*Dand v. Kingscote* (1840), 6 M. & W. 174; 9 L. J. Ex. 279;

19 L. J. (N. S.) Ex. 279; *Bishop v. North* (1843), 11 M. & W. 418; 12 L. J. Ex. 362; *Durham and Sunderland Railway Co. v. Walker and Wallis v. Harrison* (1842), 2 Q. B. 940; 11 L. J. Ex. 440.) Sect. 15.

A person, however, entitled under a covenant to the user of a tramway crossing a railway is not entitled to increase the burden of the easement beyond what it was at the date of the covenant. (*Great Western Railway Co. v. Talbot*, [1902] 2 Ch. 759; 71 L. J. Ch. 835 (C. A.).)

But the grant must be of the right to lay or use a tramway. The possession of a private right of way does not give the right to lay a tramway, even if it be used for the same purpose as the right of way was previously used (*Neath Canal Co. v. Unisarwed Resolven Colliery Co.* (1875), L. R. 10 Ch. 450); nor does the reservation of "a waggon or cart road" include such a right. (*Bidder v. North Staffordshire Railway Co.* (1878), 4 Q. B. D. 412; 48 L. J. Q. B. 248; compare *Morris v. Tottenham and Forest Gate Railway Co.* [1892] 2 Ch. 47; 61 L. J. Ch. 215, a case under Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 32.) The effect of an agreement between a landlord and his tenants to give land for a tramway and to construct the tramway respectively under very special circumstances was discussed in *Sinclair v. Caithness Flagstone Quarrying Co.* (1881), 6 A. C. 340; 8 R. (H. L.) 78, reversing 7 R. 1117. In *North British Railway Co. v. Park Yard Co., Ltd.* [1898] A. C. 643; 25 R. (H. L.) 47, reversing 24 R. 1148, an agreement between the proprietors of an estate, the feuars of part of it, and a railway company for the use and construction of a tramway by the company through that part of the estate, was held to bind the singular successors of the feuars; but it was pointed out that whether a servitude or a merely personal obligation has been granted depends on the terms of the instrument.

As to what is sufficient to constitute either an express or an implied grant of the use of a tramway, so as to bind lessees of the land over which it passes, see *Brazier v. Glasspool* (1901), W. N. 237, affirmed on different grounds (1902), W. N. 162, following *Birmingham, Dudley and District Banking Co. v. Ross* (1888), 38 Ch. D. 295; 57 L. J. Ch. 601.

But a tramway company, whose special Act incorporates the compulsory powers of the Lands Clauses Acts, cannot thereby compulsorily purchase a right to lay a tramway over land without purchasing the land on which it is laid (*Pinchin v. London and Blackwall Railway Co.* (1854), 5 De G. M. & G. 851; 1 K. & J. 36; 24 L. J. Ch. 417); and if they do purchase such land they may be compelled to take the whole of the "house or other building or manufactory" of which such land forms part (Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 92; *Furniss v. Midland Railway Co.* (1868), L. R. 6 Eq. 473). But the special Act may confer specific power to purchase either an easement (*Great*

Sect. 15. *Western Railway Co. v. Swindon and Cheltenham Railway Co.* (1884), 22 Ch. D. 677; 9 A. C. 787; 52 L. J. Ch. 306; 53 L. J. Ch. 1075), or a part without the whole (*Wood v. Great Eastern Railway Co.* (1885), W. N. 175).

Power of
Board of
Trade to
revoke,
amend, ex-
tend, or vary
Provisional
Order.

16. The Board of Trade on the application of any promoters (*t*) empowered by a Provisional Order may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order (*u*).

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order (*x*).

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order, and until such confirmation such further Provisional Order shall not have any operation (*y*).

(*t*) See sects. 4 and 24.

(*u*) Compare Light Railways Act, 1896, s. 24, and the notes thereto, as to the purposes for which amending Orders have been made thereunder. The following instances may be given of amending Orders made under the present section, and the purposes for which they were made :—

Abandonment and release of deposit.—Tramways Orders Confirmation (No. 1) (Dudley, Netherton, Old Hill and Cradley) Act, 1890 (53 & 54 Vict. c. clxxxi.). Other instances are the Norwich and Worcester Orders contained in the same Act. See the form of Abandonment Order for a light railway, *post*, p. 644.

Sale to a local authority on special terms.—Tramways Orders Confirmation (No. 3) (Dudley and Wolverhampton) Act, 1899 (62 & 63 Vict. c. cclxxiv.).

Sale to a private company without compliance with sect. 44.—Tramways Orders Confirmation (No. 3) (Gravesend, Rosherville and Northfleet) Act, 1899 (62 & 63 Vict. c. cclxxiv.).

Use of cable haulage.—Tramways Orders Confirmation (No. 2) (Newcastle-upon-Tyne Corporation) Act, 1895 (58 & 59 Vict. c. ci.).

Alteration of gauge and working by mechanical power.—Tramways Orders Confirmation (No. 5) (Rothesay), Act, 1900 (63 & 64 Vict. c. ccviii.); Tramways Orders Confirmation (No. 2) (Leamington) Act, 1901 (1 Edw. 7, c. clxxxi.).

Extension of time for commencement and opening.—Tramways Orders Confirmation (No. 1) (Devonport Corporation) Act, 1901 (1 Edw. 7, c. cclxxvii.).

Additional tramways.—Tramways Orders Confirmation (No. 2) (Southampton Corporation) Act, 1902 (2 Edw. 7, c. ccciii.). See, too, the Pontypridd Urban District Council Order confirmed by the same Act.

(x) See sects. 4 to 7.

(y) See sects. 8 to 15.

17. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a Provisional Order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the Provisional Order may be adapted to the circumstances of the case.

Power to
authorise
joint work.

Compare Light Railways Act, 1896, s. 2 (c), and note (k) thereto.

The joint purchase of a tramway undertaking by two or more local authorities is provided for by sect. 43 of the present Act.

An instance of a joint application under this section is to be found in Tramways Orders Confirmation (No. 1) (Bolton and Suburban) Act, 1878 (41 & 42 Viet. c. cccxxi.). Here the local authorities were empowered each to construct the portion of the tramways situated in their own district. The Order gives them power to make working agreements with one another and with others, and to appoint a joint committee (compare Light Railways Act, 1896, s. 17) to carry the Order into effect according to the provisions of Public Health Act, 1875 (38 & 39 Viet. c. 55) ss. 280—284 with respect to joint boards.

18. If the promoters, empowered by any Provisional Order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

Cesser of
powers at
expiration of
prescribed
time.

If within one year from the date of the Provisional Order, or within such shorter time as is prescribed in the same, the works are not substantially commenced (z); or,

Sect. 18.

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension ;

the powers given by the Provisional Order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade (*a*) ; and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised (*b*), and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways (*c*) after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England (*d*) or Scotland, to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension (*e*).

(*z*) These words refer to the actual execution of physical works. Where promoters had done no physical work on the tramway or its accessories, though they had purchased leasehold land for offices and a generating station, and had entered into binding contracts for the supply of electric cars and for the supply and installation of dynamos and electric machinery (some of which might perhaps have been works within this section), it was held that the works had not been substantially commenced. (*A.-G. v. Bournemouth Corporation*, [1902] 2 Ch. 714 ; 71 L. J. Ch. 730 (C. A.).) The “works,” then, must be physical works, but *quære* how far the

expression extends. It seems to mean something different to "tramway," to judge from the wording of the present section.

Sect. 18.

(a) The words of the section are imperative, and therefore the powers cease in the events specified unless the Board of Trade prolongs the time, nor has the Board of Trade any jurisdiction to revive powers which have so ceased. The only remedy of the promoters under such circumstances would be to make an application for a Provisional Order *de novo* or promote a Bill, under all the disadvantages of opposition &c. inseparable from such an application or promotion. (See *A.-G. v. Bournemouth Corporation*, *ub. sup.*, at (L. R.) p. 731.) The Board of Trade Rules with respect to the prolongation of time will be found *post*, p. 338. It has not been the custom of the Board of Trade, on applications for extension of time, to inquire whether the works were substantially commenced within one year. The Board of Trade is of opinion that this section does not apply in the case of a Provisional Order made under sect. 16, and merely authorising the reconstruction or the adaptation to the use of mechanical power of an existing tramway. (*Rothesay Case* (1902), 39 S. L. R. 369.)

(b) The Board of Trade is thus enabled to check a company from allowing a part of its powers to lapse in its own interest, while completing a part of the authorised scheme. It may happen that the scheme was only sanctioned on condition that the company carried out a larger scheme of construction than it desired to do in its own interests, and these words of this section enable the Board of Trade to ensure that the company should either carry out the whole scheme or be deprived of its powers altogether, by refusing to sanction the continuance of the powers in respect of the completed portion of the scheme, where the remainder of the scheme has not been carried out. Any person aggrieved may therefore have a remedy by calling the attention of the Board of Trade to the matter. A member of the public cannot compel the carrying out of statutory powers; an Act is no longer regarded as a sort of contract between the promoters and the public. (*York and North Midland Railway Co. v. R.* (1853), 1 E. & B. 858; 22 L. J. Q. B. 225; *R. v. Great Western Railway Co.* (1892), 62 L. J. Q. B. 572.) *Secus* if a provision protecting the person is found in the Act. (*Devonport Corporation v. Plymouth, Devonport and District Tramways Co.* (1884), 52 L. T. 161.)

(c) Sects. 28 and 41.

(d) Includes Wales and Berwick-upon-Tweed. (Wales and Berwick Act, 1746 (20 Geo. 2, c. 42), s. 3.)

(e) The notice here specified was once held to be the proper evidence, and the only evidence, which could be accepted by the Court, of the abandonment of a tramway undertaking, on an application by the promoters for payment out of Court of the Parliamentary deposit. (*In re Dudley and Kingswinford Tramways Co.*

Sect. 18. (1893), W. N. 162; 63 L. J. Ch. 108.) Compare sect. 41, where the discontinuance has to be proved to the satisfaction of the Board of Trade. But this rather curious decision has now been overruled. (*A.-G. v. Bournemouth Corporation*, [1902] 2 Ch. 714; 71 L. J. Ch. 730 (C. A.).) See also *R. v. Thomas* (1870), 22 L. T. 138; and *In re Yarmouth and Ventnor Railway Co.* (1871), W. N. 236.

For a similar imbroglio to that disclosed in the Bournemouth Case, *supra*, see *Dudley and Stourbridge Steam Tramways Co., Ltd. v. Wheeler* (1882), "Times" Newspaper, Sept. 21.

Local
authority
may lease or
take tolls.

19. When a tramway has been completed under the authority of a Provisional Order by any local authority (*f*), or where any local authority has under the provisions of this Act (*g*) acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease (*h*), to be approved of by the Board of Trade, demise to any person, persons, corporation, or company, the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised (*i*); or such authority may leave such tramway open to be used by the public (*k*), and may in respect of such user demand and take the tolls and charges authorised (*i*); but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges (*i*) in respect of the use of such carriages (*l*).

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the Schedule (C.) to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time,

with the consent of the Board of Trade, by lease, Sect. 19.
demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control) (*m*).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees" (*n*).

(*f*) Defined in sect. 3 and Sched. A., Part I. See notes thereto. The words will also, of course, include any body which is not strictly a local authority under this Act, *e.g.*, a county council, other than the London County Council, which has acquired statutory authority to exercise the powers conferred by this section. But otherwise promoters have no power to lease or to delegate their powers (see note (*g*) to sect. 44).

(*g*) *I.e.*, sects. 43 and 44.

(*h*) A corporation agreed to construct a tramway and lease it to a company for twenty-three years. The agreement contained this clause: "And the company shall also pay to the corporation the expenses of borrowing, management, &c., and this provision shall be so construed as to keep the corporation free from all expenses whatever in connection with the said tramways." This was held to throw on the company all owners' assessments, rates and taxes, whether imperial or local, and to preclude them from recovering such from the corporation under Lands Valuation (Scotland) Act, 1854 (17 & 18 Vict. c. 91), s. 6. (*Glasgow Corporation v. Glasgow Tramway and Omnibus Co., Ltd.* [1898] A. C. 631; 25 R. (H. L.) 77, reversing 24 R. 628.)

Yearly sums payable under such a lease in lieu of repairs, and in consideration of the provision of electric energy, are not rent, so as to require an *ad valorem* stamp. (*British Electric Traction Co., Ltd. v. Inland Revenue Commissioners* (1900), 64 J. P. 805.)

(*i*) See sects. 45 and 56.

(*k*) This is a remarkable and apparently useless provision. It is rendered still more unworkable than it at first appears by the fact

Sect. 19. that the exceptions in sect. 54, which forbids the use of carriages with flanged wheels on a tramway, do not include members of the public, who would be authorised to use the tramway under this part of this section. A somewhat similar case is that of sects. 76 and 92 of Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), which have been practically held to be unworkable. (*Powell Duffryn Steam Coal Co. v. Taff Vale Railway Co.* (1874), L.R. 9 Ch. 331; 43 L. J. Ch. 575; *Lancashire Brick and Terra Cotta Co., Ltd. v. Lancashire and Yorkshire Railway Co.* [1902] 1 K. B. 651; 71 L. J. K. B. 431.) *See also note (t) to sect. 35.

(l) This restraint on municipal trading has been, and is now, frequently removed both by special Acts and by Provisional Orders (see the model Order, *post*, p. 442). Standing Orders H. L. 133, H. C. 170a (*post*, p. 412) lay down the circumstances under which local authorities will be empowered to construct, acquire, take on lease or work tramways beyond the limits of their district. For *locus standi* against provisions conferring such powers, see *Edinburgh Corporation Tramways Bill* (1893), R. & S. 250; *Edinburgh Improvement and Tramways Bill* (1896), 1 S. & A. 80; *Birkenhead Corporation Bill* (1897), 1 S. & A. 148; *Salford Corporation Bill* (1897), 1 S. & A. 218; *Burnley Corporation (Tramways, &c.) Bill* (1898), 1 S. & A. 232.

(m) Such a discontinuance of working by the lessees would probably be held to be beyond the control of the promoters, whether it were beyond the control of the lessees or not, and so the Board of Trade would not be able to declare the powers in respect of the tramway to be at an end as against the promoters under sect. 41. Compare with this clause the wording of sect. 41.

(n) It would seem that a valid lease can only be made under this section, on the general principle (discussed in note (g) to sect. 44, *post*) that a transfer or delegation of statutory powers can only take place by statutory authority. This view is strongly supported by *Omnibus Conveyance Co., Ltd. v. Liverpool United Tramways and Omnibus Co.* (1882), 26 So. J. 580; "Times" Newspaper, July 4. The plaintiffs claimed specific performance of an agreement between the plaintiffs and defendants to share the profits of any running powers or lease granted to either of them over the Liverpool Corporation's tramways. A clause in the Liverpool Tramways Act, 1880 (43 & 44 Vict. c. exxvi.), which incorporated the present section, had provided for the lease of certain new tramways to the defendants. The defendants succeeded on a demurrer to the effect that this statute and the General Tramways Act did not authorise any sub-assignment of the lease by them, and therefore rendered the performance of their agreement with the plaintiffs void. And, generally speaking, a company cannot lease its statutory powers (*A.-G. v. Great Eastern Railway Co.* (1880), 5 A. C. 473, 484; 49 L. J. Ch. 545, 550 (per Lord Blackburn); *Winch v. Birken-*

*head, §c. Railway Co. (1852), 5 De G. & S. 562), though it may deal with its powers where such dealing does not amount to a lease. (Midland Railway Co. v. Great Western Railway Co. (1873), L. R. 8 Ch. 841; 42 L. J. Ch. 438.) The fact that in Edinburgh Street Tramways Bill (1896), 1 S. & A. 84, the beneficial assignees of a lease of tramways were allowed a *locus standi* has no bearing outside Parliamentary Committees. But if a lease were made, with the consent of the Board of Trade, to A. and his assigns, apparently an assignment under such a lease to B. made by A. would not require the further sanction of the Board of Trade, and B. would be a "lessee" within this section. So, too, would A.'s executors be if the lease was to A. and his executors. Lessees under this section are not "promoters" within the meaning of this Act. (Marshall v. South Staffordshire Tramways Co. [1895] 2 Ch. 36, 51; 64 L. J. Ch. 481, 483.)*

Sect. 19.

20. Where the local authority (*o*) in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a Provisional Order, and carrying into effect the purposes of such Provisional Order, out of the local rate (*o*), and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

How expenses to be defrayed.

Where the local rate (*o*) is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such expenses, the Board of Trade may, by the Provisional Order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses (*p*).

Such local authority may, for the purposes of such Provisional Order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such

Sect. 20. local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

- (1.) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade (*q*):
- (2.) The money may be borrowed for such time, not exceeding thirty years (*r*), as such local authority, with the sanction of the Board of Trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other Government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the Commissioners (*s*), shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

For the purposes of such incorporation, the terms "the special Act," and "the Commissioners," shall be construed to mean respectively a Provisional Order under this Act, and the local authority.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such Provisional Order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent (*t*) or tolls (*u*) in respect of the tramway authorised thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving

effect to such Provisional Order there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent (*t*) or tolls (*u*) in respect of the tramway authorised by such Provisional Order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied (*x*). Sect. 20.

(*o*) Defined in sect. 3 and Sched. A., Part I. See notes thereto. For a provision that a county council's expenses under a special Act shall be provided for as payments for special county purposes, see London County Council (Tramways and Improvements) Act, 1901 (1 Edw. 7, c. cclxxi.), s. 70.

(*p*) Compare Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 227, which provides that any limit imposed on any rate by any local Act of Parliament shall not apply to any rate levied to defray the expenses of an urban authority incurred under that Act.

(*q*) Before sanctioning a loan under this section, it is the usual practice of the Board of Trade to require from the local authority statements of the amount of the outstanding local loans, of the rateable value of the district under the local authority, and of the amount of the local rate, and also details of the manner in which the proposed loan is to be expended. The Board of Trade then usually orders a local inquiry, of which the local authority are required to insert an advertisement in a local paper, informing ratepayers that they have a right to attend and be heard. Compare the Local Government Board's inquiries in similar circumstances under Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 234 (3).

Supplemental loans are sanctioned by the Board of Trade when they are satisfied that the supplemental expenditure has been or will be properly incurred.

(*r*) The periods for repayment sanctioned by the Board of Trade are usually as follows:—Not exceeding thirty years for expenditure on permanent way or buildings, not exceeding twenty years for expenditure on electrical equipment, not exceeding fifteen years for expenditure in respect of cars. Sometimes the whole sum together is made repayable at an equated period. Compare Light Railways Act, 1896, ss. 11 (*g*) and 16, and notes thereto.

(*s*) 10 & 11 Vict. c. 16, ss. 75 to 88 inclusive. The application of these sections, with the terms "the special Act" and "the Commissioners" construed as this section provides, to the circumstances of this section is not altogether appropriate, but no substantial difficulty arises.

(*t*) When the tramway is leased by them under sect. 19.

(*u*) See sect. 45.

Sect. 20.

(*x*) With this section generally compare the provisions of Light Railways Act, 1896, s. 16, and those of Public Health Act, 1875, ss. 233 to 244 inclusive, as to the borrowing powers of local authorities. By Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 31, any local authority, notwithstanding any provision in any previous Act of Parliament, may borrow in the manner provided by that Act any loan which it is authorised to borrow, and re-borrowing is also provided for. Sect. 15 prescribes the method in which a sinking fund is created, where such a fund is prescribed by any previous or subsequent Act authorising a local authority to borrow money.

Metropolitan Board may, for carrying Provisional Order into effect, create stock under Loans Act of 1869.

21. The Metropolitan Board of Works (*y*) may, in order to raise money for the purpose of carrying into effect the purposes of any Provisional Order obtained by them, create additional stock, not exceeding in the whole three hundred thousand pounds, under "The Metropolitan Board of Works (Loans) Act, 1869," in like manner, and with the like sanction, in and with which they may create stock in order to raise money for the purposes of the Acts mentioned in the first schedule to that Act; and all the provisions of that Act shall apply as if that money were raised and that stock were created for the purposes of the last-mentioned Acts, with the exception that the money required for the purposes of any such Provisional Order may be borrowed by them in addition to the sum limited by section thirty-eight of "The Metropolitan Board of Works (Loans) Act, 1869" (*z*).

(*y*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), transfers the powers, duties and liabilities of the Metropolitan Board of Works to the London County Council. The Acts now governing the borrowing powers of the London County Council are the Metropolitan Board of Works (Loans) Acts, 1869, 1870 and 1871 (32 & 33 Vict. c. 102, 33 & 34 Vict. c. 24, and 34 & 35 Vict. c. 47), and the series of annual Acts cited as the London County Council (Money) Acts, 1875 to 1903.

(*z*) The London County Council and its predecessors have never raised money under this section, but they take separate powers to raise money in each special Act authorising the construction of tramways by them, as in London County Council (Vauxhall Bridge Tramways) Act, 1896 (59 & 60 Vict. c. cxi.), s. 20; London County Tramways Act, 1900 (63 & 64 Vict. c. cclxx.), s. 46; London County

Tramways (Electrical Power) Act, 1900 (63 & 64 Vict. c. cccxxxviii.), s. 27; and London County Council (Tramways and Improvements) Act, 1901 (1 Edw. 7, c. cclxxi.), s. 67. Sect. 21.

PART II.

Construction of Tramways.

22. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorised by any Provisional Order or Act of Parliament (*a*), and shall be incorporated with such Provisional Order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted (*b*) by any such Provisional Order or Act, shall apply to the undertaking (*c*) authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said Provisional Order or Act, and be construed therewith as forming one Provisional Order or Act, as the case may be.

As to incorporation of Parts II. and III. of this Act with Provisional Order and Special Acts.

(*a*) Not, therefore, to a tramway constructed under Light Railways Act, 1896, which, though in fact a tramway, is called a light railway, and is made under a Light Railway Order. It will be seen, however, that the model Light Railway Order (*post*, p. 586) substantially embodies the provisions of these parts of the present Act.

(*b*) As to the effect of these words, see sect. 15 and note (*p*) thereto. The section is badly drawn. It first enacts that Parts II. and III. shall apply and be incorporated, and then modifies this by enacting that they shall only apply so far as they are applicable and so far as they are not expressly varied or excepted.

(*c*) The meaning of this word is discussed in note (*o*) to sect. 43.

23. In Part II. and Part III. of this Act, the term “special Act” shall be construed to mean any Act of Parliament which shall be hereafter passed or any Provisional Order authorising the construction of a

“Special Act.”

Sect. 23. tramway, and with which the said parts of this Act shall be incorporated as aforesaid (*d*).

(*d*) *I.e.* by the preceding section. But in view of the provisions of that section the last sentence of this section is not happily worded.

“Promoters.” **24** (*e*). The term “the promoters” (*f*) shall mean any person, persons, corporation, company, or local authority authorised by special Act (*g*) to construct a tramway.

(*e*) *Subaudi* here from sect. 23 “In Part Two and Part Three of this Act.” “Promoters,” as far as Part I. of the Act is concerned, has already been defined in sect. 4, of which this section is an inartistic duplication, extending the definition of promoters to persons authorised to construct a tramway under a special Act as well as under a Provisional Order.

(*f*) Sects. 4 and 24 define “promoters” for the purposes of this statute. But questions may and do arise with regard to the position and obligations of persons who are “promoters” in the ordinary sense of the word, but who, in relation to the Tramways Act, are, so to speak, promoters of the statutory promoters—that is, persons who entered into the preliminary engagements and arrangements which resulted in the obtaining of the Act or Order by the statutory promoters, whether such persons are identical with the subsequent statutory promoters or not. It is beyond the scope of this work to discuss such questions otherwise than in a summary way.

(*i.*) *The enforcement of arrangements made with promoters, which are embodied in an Act either by clause or by scheduled agreement.*

“Where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment, so far as it makes provision on his behalf.” (*Herron v. Rathmines and Rathgar Improvement Commissioners*, [1892] A. C. 498, 523, per Lord Macnaghten; and compare *Devonport Corporation v. Plymouth, Devonport and District Tramways Co.* (1884), 52 L. T. 161.) Such a person, therefore, may enforce his rights by any appropriate legal proceedings, and it will be no defence to allege that the enforcement of such rights will cause serious damage to the undertaking, *e.g.*, the stopping of a railway, while the injury to the plaintiff is only trifling. (*A.-G. v. Mid-Kent Railway Co. and South Eastern Railway Co.* (1867), L. R. 3 Ch. 100.) But an injunction will not be granted unless

the plaintiff can show that he has a private interest in the matter. (*Liverpool Corporation v. Chorley Waterworks Co.* (1852), 2 De G. M. & G. 852.) Nor will the plaintiff have any remedy where the Act, which schedules the agreements on which the plaintiff relies, authorises the matter of which he complains. (*Edinburgh Street Tramways Co. v. Black* (1873), L. R. 2 H. L. Sc. 336; 11 M. (H. L.) 57, see note (n) on sect. 9, *supra*.) In construing the statutory provisions which create such rights, what may have been said during the negotiations of the contract which they embody, or during the proceedings before a Parliamentary Committee, cannot be considered (*Steele v. Midland Railway Co.* (1865), L. R. 1 Ch. 275, 282; *North British Railway Co. v. Tod* (1846), 12 Cl. & F. (8 E. R.) 722); neither can plans exhibited or deposited in pursuance of Standing Orders, except in so far as they are made part of the Act, as, for instance, by the Act's directing compliance with them (*North British Railway Co. v. Tod*, *ub. sup.*; *Beardmer v. London and North Western Railway Co.* (1849), 1 Mac. & G. 112; 18 L. J. Ch. 432; *Edinburgh Street Tramways Co. v. Black*, *ub. sup.*; *A.-G. v. Great Eastern Railway Co.* (1872), L. R. 7 Ch. 475; L. R. 6 H. L. 367; 41 L. J. Ch. 505; *Mackett v. Herne Bay Commissioners* (1876), 35 L. T. 202; 37 L. T. 812 (C. A.)). Lord Halsbury, L. C., apparently, did not intend to doubt this in *Herron v. Rathmines and Rathgar Improvement Commissioners* (*ub. sup.*, at p. 502), in saying: "the character and details of the works must be ascertained partly from the deposited plans and sections, and partly from the language of the Act itself"; he seems to have been thinking only of the identification of the subject-matter with which the Act was dealing, and of the facts as existing at the time the Act was passed.

It seems that the Court would restrain an application to Parliament in breach of an arrangement, or otherwise in a proper case. (*Steele v. North Metropolitan Railway Co.* (1867), L. R. 2 Ch. 237; 36 L. J. Ch. 540; *In re London, Chatham and Dover Railway Arrangement Act* (1869), L. R. 5 Ch. 671.)

(ii.) *The enforcement of arrangements made with promoters, which are not confirmed by Act.*

The company, which, *ex hypothesi*, is not in existence at the date of such an agreement, cannot ratify it. (*Kelner v. Barter* (1866), L. R. 2 C. P. 174; 36 L. J. C. P. 94.) The company, however, may become equitably bound by such a contract as the result of some act or circumstance which amounts to an adoption or recognition of it. (*Touche v. Metropolitan Railway Warchousing Co.* (1871), L. R. 6 Ch. 371; *Bagot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.* [1902] 1 Ch. 146; 71 L. J. Ch. 158 (C. A.)) Such an act or circumstance must arise from the deliberate conduct of the company, and not from an erroneous belief that they are liable under

Sect. 24. the contract. (*In re Northumberland Avenue Hotel Co., Sully's case* (1886), 33 Ch. D. 16.) Nor is a resolution of directors adopting and confirming such a contract sufficient. (*North Sydney Investment and Tramway Co., Ltd. v. Higgins*, [1899] A. C. 263; 68 L. J. P. C. 42 (P. C).) The criterion is really rather the receipt of benefits under the contract by the company, which renders it inequitable that they should repudiate the contract under which they have received the benefits. (*In re Empress Engineering Co.* (1880), 16 Ch. D. 125, 130 (C. A.); *Howard v. Patent Ivory Manufacturing Co.* (1888), 38 Ch. D. 156, 164; 57 L. J. Ch. 878, 882.) Unless, therefore, such a contract specifically excludes the personal liability of the promoter, he will be personally liable as being agent for a non-existent principal. (*Kelner v. Baxter, ub. sup.*; *Scott v. Lord Ebury* (1867), L. R. 2 C. P. 255; 36 L. J. C. P. 161.)

There seems to be no reason why the above principles should not apply to the case of a statutory corporation (including corporations constituted by a Light Railway Order). The impossibility of ratification by a company of an agreement, which was made when it was not yet in existence, is strengthened, as pointed out by Lord Cranworth, L. C., in *Preston v. Liverpool, Manchester and Newcastle-upon-Tyne Junction Railway Co.* (1856), 5 H. L. C. (10 E. R.) 605, 618; 25 L. J. Ch. 421, by the consideration that the liabilities of such a company ought to be limited by the ambit of the Act which brings it into existence. Thus a company will not be bound even by an agreement arranged before a Parliamentary Committee and expressed to be as obligatory as if it were specially enacted in the Bill, though it will bind the parties to it. (*Caledonian, &c. Railway Co. v. Helensburgh Magistrates* (1856), 2 Macq. 391.)

It is otherwise where the company is already in existence at the date of the agreement, and enters into the agreement conditionally on its obtaining further powers under a projected Act. (*Scottish North Eastern Railway Co. v. Stewart* (1859), 3 Macq. 382; *Taylor v. Directors, &c. of the Chichester and Midhurst Railway Co.* (1870), L. R. 4 H. L. 628; 39 L. J. Ex. 217.)

But there is no reason why a company, not in existence at the date of the agreement, should not adopt and become equitably liable under such an agreement. This principle was not doubted in *Preston v. Liverpool, &c. Railway Co., ub. sup.*, nor in *Mann v. Edinburgh Northern Tramways Co.*, [1893] A. C. 69; 20 R. (H. L.) 7; 62 L. J. P. C. 74 (discussed under head (iv.) below), and was followed in *Lindsey (Earl of) v. Great Northern Railway Co.* (1853), 10 Hare, 664; 22 L. J. Ch. 995, and *Williams v. St. George's Harbour Co.* (1858), 2 De G. & J. 547; 27 L. J. Ch. 691. It may be noted that Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121), s. 30, specially provides that promoters' contracts for the taking of lands shall be binding on the company.

(iii.) *The enforcement of arrangements for the payment of preliminary expenses and for preliminary services.* Sect. 24.

Whether the payment of such expenses is provided for in the special Act or not, it is essential that the claimant, whether he be a solicitor, Parliamentary agent, valuer, or what not, should be a person who looked to the company and not to a promoter for payment, even where the company has agreed with the promoter to pay, or had the benefit of the claimant's services; otherwise he has no cause of action against the company. (*In re Skegness and St. Leonards Tramways Co.* (1888), 41 Ch. D. 215; 58 L. J. Ch. 737 (C. A.); *In re Hereford and South Wales Waggon and Engineering Co.* (1876), 2 Ch. D. 621; 45 L. J. Ch. 461; *In re Rotherham Alum and Chemical Co.* (1883), 25 Ch. D. 103; 53 L. J. Ch. 290; *Wyatt v. Metropolitan Board of Works* (1862), 11 C. B. N. S. 744; 31 L. J. C. P. 217; *In re Kent Tramways Co.* (1879), 12 Ch. D. 312 (C. A.).) But the company might be equitably bound to pay if the claimant had looked to no one, and had no one to look to, for payment other than the company (*In re Hereford, &c. Co.*, *In re Rotherham, &c. Co.*, *ub. sup.*), and if the company had taken the benefit of the claimant's services (*Terrell v. Hutton* (1854), 4 H. L. C. (10 E. R.) 1091, 1099; 23 L. J. Ch. 345, 347), unless his claim was to be rejected on the ground of fraud or some similar ground. (*In re Hereford, &c. Co.*, *ub. sup.*)

Moreover, where the expenses are not provided for by the special Act, the promoters cannot sustain a claim for preliminary expenses against the company, for there is no privity of contract between them, even though the memorandum or articles of association of the company provide for the payment of them by the company to the promoters. (*Melhado v. Porto Alegre, &c. Railway Co.* (1874), L. R. 9 C. P. 503; 43 L. J. C. P. 253.)

Where, on the other hand, the payment of the preliminary expenses is provided for in the special Act, either directly or by the incorporation of Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), s. 65, the persons who have incurred the expenses or done the services on behalf of the intended company may sue the company (*Tilson v. Warwick Gas Light Co.* (1825), 4 B. & C. 962; 4 L. J. (O. S.) K. B. 53; *Hitchins v. Kilkenny, &c. Railway Co.* (1850), 9 C. B. 536; *Scott v. Lord Ebury* (1867), L. R. 2 C. P. 255, 264; 36 L. J. C. P. 161, 164), even though the claimant be himself a member of the company. (*Carden v. General Cemetery Co.* (1839), 5 Bing. (N. C.) 253; 8 L. J. (N. S.) C. P. 163.) The costs which he can recover will include costs of lines projected, but abandoned before a Parliamentary Committee and not sanctioned in the special Act. (*In re Tilleard* (1863), 3 De G. J. & S. 519; 32 L. J. Ch. 765.) But the company must have had the benefit of the expenses; so a motion for an injunction against

Sect. 24. a company, based on an agreement with respect to the deposit, the benefit of which accrued to the promoters, was refused. (*Cutbill v. Shropshire Railways Co.* (1891), W. N. 65.) The fact that the company had not raised and could not raise money is no answer to such a claim. (*Manning v. London, Worcester and South Wales Railway Co.* (1867), 17 L. T. 68.) Nor will an indemnity, given by a promoter to persons who signed the subscription contract against liability for expenses, operate to exonerate the company in its corporate capacity from a claim by the promoter. (*In re Brompton and Longtown Railway Co., Shaw's Claim* (1875), L. R. 10 Ch. 177; 44 L. J. Ch. 670; compare *Id. Addison's Case* (1875), L. R. 20 Eq. 620; 44 L. J. Ch. 537.) But a promoter's claim will not be allowed if he has contracted himself out of the benefit of the Act by agreeing to bear the costs himself. (*Garin v. Hoylake Railway Co.* (1865), L. R. 1 Ex. 9; 35 L. J. Ex. 52.)

There is nothing in the above cases to limit the nature of the preliminary expenses recoverable from a company where they are recoverable at all, and doubtless everything which is really requisite for the promotion of the company and the obtaining of its powers would be allowed. But a sum of money paid to an influential landowner, not as compensation, but to secure his countenance and support for a Bill, is not recoverable from the company, though it might be from the promoters. (*Shrewsbury (Earl of) v. North Staffordshire Railway Co.* (1865), L. R. 1 Eq. 593; 35 L. J. Ch. 156.)

(iv.) *Liability as between promoters and company.*

A promoter is constructively regarded as agent or trustee for the company which is not yet in existence (*Erlanger v. New Sombrero Phosphate Co.* (1878), 3 A. C. 1218; 48 L. J. Ch. 73); but he must have actually done some act of promotion—*e.g.*, have invited the public to come in (*Ladywell Mining Co. v. Brookes* (1887), 35 Ch. D. 400, 411; 56 L. J. Ch. 684, 687 (C. A.)), and whether the act done amounts to an act of promotion will be a question of fact for the Court in each case. Inasmuch as he is held to occupy such a fiduciary position, he must deal with the company—*i.e.*, with the intended shareholders—at arm's length, and with the fullest disclosure of facts, or he will be liable to account to the company for the profits which he has made in dealing with it. (*Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; 68 L. J. Ch. 699 (C. A.); *Gluckstein v. Barnes*, [1900] A. C. 240; 69 L. J. Ch. 385.) But the promoter is entitled to deduct from such profits the expenses properly incurred or money *bonâ fide* paid, and to pay over to the company only the amount of his net profit. (*Bagnall v. Carlton* (1877), 6 Ch. D. 371; 47 L. J. Ch. 30 (C. A.); *Emma Silver Mining Co. v. Grant* (1879), 11 Ch. D. 918 (C. A.)) As to the alternative of rescission or repayment of profits, see *In re Lady Forrest (Murchi-*

son) *Gold Mine, Ltd.*, [1901] 1 Ch. 582; 70 L. J. Ch. 275. In *Mann v. Edinburgh Northern Tramways Co.*, [1893] A. C. 69; 20 R. (H. L.) 7; 62 L. J. P. C. 74, an agreement was made between the tramway company and contractors for payment of a lump sum to cover the cost of the construction of the tramways and the expenses incurred by the company in obtaining their Act. The promoters of the company, who negotiated this agreement, also negotiated at the same time an agreement for the payment to them by the contractors of a lump sum (largely exceeding the expenses of obtaining the Act) in consideration of the promoters paying such expenses. It was held that the promoters must account to the company for the profit which they had made under this second agreement, not on the ground of non-disclosure (as to which there was some doubt), but on the ground that it was *ultra vires* of the company to pay, even indirectly, such a sum to the promoters. It was held in connection with the same matter that the promoters were not barred by the fact of their being promoters from receiving remuneration for their professional services, rendered in connection with the obtaining of the special Act, but that a promoter was not entitled to charge a commission against the company in respect of money for the Parliamentary deposit obtained by him from a bank on his individual credit. In connection with the same case the method of taxing a promoter's account adopted by the Taxing-Master of the House of Commons, to whom it had been remitted, was discussed. (*Edinburgh Northern Tramways Co. v. Mann* (1896), 23 R. 1056; add *Mann v. Patent Cable Tramways Corporation* (1886), 2 T. L. R. 454; 30 So. J. 370, and *Beattie v. Edinburgh Northern Tramways Co.* (1891), 28 S. L. R. 763.) Where a Parliamentary agent is likewise a solicitor, a bill of costs delivered by him, which relates exclusively to business done by him in the former capacity, cannot be referred for taxation under Solicitors Act, 1843 (6 & 7 Vict. c. 73). (*Re Baker, Lees and Co.*, [1903] 1 K. B. 189; 72 L. J. K. B. 136 (C. A).) See further the cases cited on Parliamentary Deposits and Bonds Act, 1892, *post*, p. 297. With the definition of "promoters" in this section compare the definitions in Preliminary Inquiries Act, 1851 (14 & 15 Vict. c. 49), s. 7, and Parliamentary Costs Act, 1865 (28 & 29 Vict. c. 27), s. 9. The expression here and in sect. 4 means not only the persons originally authorised to construct a tramway, but also persons to whom the tramway is transferred under sects. 43 and 44. But it does not include lessees under sect. 19, or licensees under sect. 35, or debenture-holders. (*Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36, 51; 64 L. J. Ch. 481, 483.) See also the cases on the transfer of promoters' powers in the notes to sect. 44, *post*.

(g) If statutory powers are exceeded, or statutory provisions imposed for the benefit of the public and not of individuals are neglected, the promoters may be restrained by an action (formerly

Sect. 24. an information) brought by the Attorney-General at the instance of a relator, whether the public has in fact suffered any injury or not. (*A.-G. v. Great Eastern Railway Co.* (1879), 11 Ch. D. 449; 48 L. J. Ch. 428 (C. A.); affirmed 5 A. C. 473; 49 L. J. Ch. 545; *A.-G. v. London and North Western Railway Co.*, [1900] 1 Q. B. 78; 69 L. J. Q. B. 26, and cases there followed.) Compare *A.-G. v. London County Council*, [1901] 1 Ch. 781; [1902] A. C. 165; 70 L. J. Ch. 367; 71 L. J. Ch. 268, where a local authority was restrained, in an action brought by the Attorney-General at the relation of omnibus proprietors, who were also ratepayers, and by the said omnibus proprietors, from running omnibuses in connection with tramways which they worked under statutory powers. This last case also shows that the jurisdiction of the Attorney-General to decide whether he shall bring such an action or not is absolute. The relator must, where practicable and where he has a sufficient interest, be made co-plaintiff with the Attorney-General (as in *A.-G. v. Hanwell Urban District Council*, [1900] 2 Ch. 377; 69 L. J. Ch. 626). The Attorney-General may, of course, bring his action in matters of this kind without a relator (*A.-G. v. Logan*, [1891] 2 Q. B. 100, 107); but it has not been the practice in recent times to do so.

Mode of
formation of
tramways.

25. Every tramway which is hereafter authorised by special Act (*h*) shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch (*i*), and shall be laid and maintained in such manner that the uppermost surface of the rail (*k*) shall be on a level with the surface of the road (*l*), and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner (*m*).

(*h*) See sect. 23.

(*i*) This is the gauge fixed for all railways in Great Britain by Railway Regulations (Gauge) Act, 1846 (9 & 10 Vict. c. 57), s. 1; it had no more reasonable origin than that it happened to be the ordinary gauge of carts. Such a gauge has been found to be too wide for practical purposes in the case of horse tramways, and 3 ft. 6 in. has been the gauge most often adopted for them. For tramways, on which mechanical power is used, the standard

gauge is now generally employed. A clause providing for a gauge other than 4 ft. 8½ in. will be found *post*, p. 427. This clause, it will be noted, also provides for a variation of sect. 34 as to the width of carriages. Such width is varied according to the variation of the gauge, as provided by the scale fixed by the Board of Trade, viz.:—

Gauge.	Maximum Width of Carriage.
4 ft. 0 in.....	6 ft. 6 in.
3 ft. 6 in.....	6 ft. 4 in.
3 ft. 0 in.....	6 ft. 0 in.
2 ft. 6 in.....	5 ft. 6 in.
2 ft. 0 in.....	5 ft. 0 in.

The maximum width of carriage for a 4 ft. 8½ in. gauge under sect. 34 would be 6 ft. 6½ in., *i.e.*, 4 ft. 8½ in. plus 11 in. overhang on either side. The above variations permit carriages from 8 to 14 in. wider than they are authorised to be under sect. 34.

(k) There is no suggestion of grooved rails in this section, nor are they necessarily suggested by the manner in which flanged and other wheels are dealt with in sects. 34 and 54. The words “uppermost surface” are much more appropriate to the ordinary railway rail than to a grooved tramway rail. In fact, the Act seems to contemplate the use of railway rails, along which ordinary railway carriages and trucks could run, and a large interchange of traffic between railways and tramways; it intends a sort of system of light railways (*cf.* Light Railway Act, 1896, s. 18). If this was contemplated the intention has not been realised. Sometimes the use of railway trucks and carriages on tramways by lessees is forbidden. The special Act generally contains provisions (see *post*, p. 428) as to the approval of rails and sub-structure by the Board of Trade, and as to clearance. The Board of Trade have issued memoranda on these matters (*post*, pp. 340, 341). Provision is also made for the alteration of the level of the rails if the level of the road is altered (see *post*, p. 429). It was held by the Exchequer *in banc* in *Savage v. North Metropolitan Tramways Co.* (1873), “Times” Newspaper, Nov. 13, that judgment should be given for the plaintiff or for the defendants, according as an accident was due to the irregularity of the road or to the horse’s catching his hoof in the groove of the rail. In *Elkins v. North Metropolitan Tramways Co.* (1889), 24 L. J. Newspaper, 649, the plaintiff recovered damages for an accident caused by a depression in some of the stones which formed the track. The following Canadian cases may also be referred to: *R. v. Toronto Street Railway Co.* (1865), 24 Upp. Can. Q. B. 454, an omission to lay the rails flush with the street is an indictable nuisance, whether traffic is thereby unnecessarily impeded or not; *A.-G. v. Toronto Street Railway Co.* (1868), 14 Upp. Can. Ch. 673; 15 Upp.

Sect. 25.

Sect. 25.

Can. Ch. 187, the rails must be not only laid flush but kept flush with the surface; if they are not, a decree will be made for their removal. *Contra*, *Eddy v. Ottawa City Passenger Railway Co.* (1871), 31 Upp. Can. Q. B. 569. In *Halifax Street Railway Co. v. Pryce* (1893), 22 Can. S. C. R. 258, the company was held liable for injury to a horse caused by their rails not being flush with the surface.

Contrast the position of a company, which is not liable to repair a road, where an accident is caused by the projection of a portion of their works above the surface. They are protected if their own work was properly made at the outset, and remains in good condition. (*Moore v. Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462; 55 L. J. Q. B. 304 (C. A.); cf. *Thompson v. Brighton Corporation*, [1894] 1 Q. B. 332; 63 L. J. Q. B. 181 (C. A.).)

As to liability for accidents arising from works generally, see notes to sect. 55, *post*, p. 224.

For an action for infringement of a patent for improvements in points and crossings for tramways, see *Winby v. Manchester*, §c. *Steam Tramways Co.* (1891), 8 R. P. C. 61.

(l) Defined in sect. 3.

(m) "Prescribed" by rule under the Act (sect. 3), in this case by Board of Trade Rule XXV. (*post*, p. 338).

In *Devonport Corporation v. Plymouth, Devonport and District Tramways Co.* (1884), 52 L. T. 161 (C. A.), an injunction was granted at the suit of the Devonport Corporation against the opening of that part of their system of tramways which lay in Plymouth, under a section of their Act which provided that they should not open any of their tramways till the whole was completed without the consent of the Plymouth and Devonport Corporations. Where a tramway has been opened without being certified as here provided, the Attorney-General has obtained an injunction to stop its working, the Court not accepting the counter-argument of public convenience. (*Attorney-General v. Southall, Ealing and Shepherd's Bush Tramways Co.* (1874), "Times" Newspaper, July 10.)

Power to
break up
streets, &c.

26. The promoters (*n*) from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised, or any part or parts thereof respectively, may open and break up any road (*o*), subject to the following regulations (*p*):

1. They shall give to the road authority (*o*) notice of their intention, specifying the time at which they will begin to do so, and the portion of road (*o*) proposed to be opened or

broken up, such notice to be given seven days at least (*q*) before the commencement of the work : Sect. 26.

2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work :
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence (*r*) :
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least (*q*) before the commence-

Sect. 26. ment of such work such superintendence is refused or withheld (*s*).

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least (*q*) before the commencement of such work such superintendence is refused or withheld (*t*).

(*n*) See sects. 4 and 24.

(*o*) Defined in sect. 3.

The definition of "road" does not include the footways as well as the carriageway (compare the wording of the present section), and consequently, where a Provisional Order gave a company no power to break up footways for the purpose of laying electric feeders, it was held that the present section gave them no such power, and they were restrained by injunction from doing so without the consent of the road authority. (*Hyde Corporation v. Oldham, Ashton and Hyde Electric Tramway, Ltd.* (1900), 64 J. P. 596; 16 T. L. R. 492 (C. A.).) The Board of Trade had approved of a scheme which involved laying cables under the footways, and the case shows the necessity of embodying all such necessary powers in the Provisional Order, in view of the fact that the powers granted by Tramways Act, 1870, are not sufficient for the proper working of modern forms of traction. But, at the same time, in the above case the Court of Appeal reversed the decision of Grautham, J., in respect of his grant of a mandatory injunction to remove the wires already laid, in view of the decision in *St. Mary's, Battersea, Vestry v. County of London, &c. Electric Lighting Co., Ltd.* [1899] 1 Ch. 474; 68 L. J. Ch. 238 (C. A.).

(*p*) Compare the similar provisions of Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 6 to 12; Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28 to 34; and Telegraph Act, 1863 (26 & 27 Vict. c. 112), ss. 6 to 8, extended by Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 8. Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 12, incorporates the first of these. See also the elaborate provisions of Electric Lighting (Clauses) Act, 1899 (62 &

63 Vict. c. 19), Sched., ss. 11 *sqq.*; Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 109 to 115; and Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 82. Unauthorised interference with a road or street is liable to prosecution under Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 72 (*Hawkins v. Robinson* (1873), 37 J. P. 662), and Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149. It may also be made the subject of indictment as a common law nuisance, and within certain limits may be restrained by injunction.

Sect. 26.

(i.) As to indictment for nuisance, see *R. v. Train* (1862), 2 B. & S. 640; 31 L. J. M. C. 169, and the other cases cited in the note to the title of this Act (*ante*, p. 91); *R. v. Longton Gas Co., Ltd.* (1860), 2 E. & E. 651; 29 L. J. M. C. 118; and *R. v. United Kingdom Electric Telegraph Co., Ltd.* (1862), 2 B. & S. 647 n.; 31 L. J. M. C. 166. Whether a particular breaking-up of a particular highway at a certain time is a nuisance may be a question of fact (*Edgeware (sic) Highway Board v. Harrow District Gas Co.* (1874), L. R. 10 Q. B. 92; 44 L. J. Q. B. 1); but the breaking-up of streets under a claim of right must necessarily subject the company or persons, who do so, to an indictment. (*A.-G. v. Cambridge Consumers' Gas Co.* (1868), L. R. 4 Ch. 71, at p. 80; 38 L. J. Ch. 94, at pp. 107, 108, per Wood, L. J.; *Preston Corporation v. Fullwood Local Board* (1885), 53 L. T. 718.) The consent or acquiescence of the road authority or the benefit of the public are no defence. (*R. v. Train*, *ub. sup.*; *Preston Corporation v. Fullwood Local Board*, *ub. sup.*; *R. v. Sheffield Gas Consumers' Co.* (1853), 21 L. T. (O. S.) 153; 18 Jur. 146 n.)

(ii.) As to an injunction, the Court will not restrain the company or person who is breaking up the road, if the damage done is only temporary or trifling (*A.-G. v. Sheffield Gas Consumers' Co.* (1853), 3 De G. M. & G. 304; 22 L. J. Ch. 811; *Goldsmid v. Tunbridge Wells Improvement Commissioners* (1866), L. R. 1 Ch. 349; 35 L. J. Ch. 382; *Elmhirst v. Spencer* (1849), 2 Mac. & G. 45; *Barber v. Penley*, [1893] 2 Ch. 447; 62 L. J. Ch. 623), or if the Court thinks that a sufficient legal remedy is otherwise provided (*A.-G. v. Sheffield Gas Consumers' Co.*, *ub. sup.*). But it will restrain the offender if the damage done is continuous or irreparable. (*A.-G. v. Cambridge Consumers' Gas Co.*, *ub. sup.*, per Wood, L. J.)

If the proceedings are not taken by the road authority, the complainants will have a better chance of success, if they are taken with the consent and in the name of the Attorney-General, as in two of the cases cited above, and see *Stockport District Waterworks Co. v. Manchester Corporation* (1863), 7 L. T. (N. S.) 545. But even then it is possible that the motives of the relators may be looked at. (*A.-G. v. Sheffield Gas Consumers' Co.*, *ub. sup.*, per Knight Bruce, L. J.; *A.-G. v. Cambridge Consumers' Gas Co.*, *ub. sup.*, per Wood, L. J.) It must be observed that in Scotland any member

Sect. 26.

of the public can maintain an action for the purpose of obtaining general relief on behalf of the public. (*Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 24 R. (H. L.) 8; 66 L. J. P. C. 1.) In *A.-G. v. North Metropolitan Tramways Co.* (1873), "Times" Newspaper, Nov. 10, Lord Selborne, L. C., refused an interim injunction to restrain the company from connecting a certain car shed and stables with their main line by a line crossing a footpath alleged to be a public footpath. He observed (the words are not reported) that it was a serious question to be determined at the hearing of the cause, and added, "I do not conceive any irremediable damage if the line is made now, and it is afterwards held at the hearing of the cause that the tramway is laid down so as to be injurious; whereas, on the other hand, if the Court should prevent its being done, it is quite possible it may suspend, in a manner very injurious to the company—and, I am bound to assume, from the preamble to the Act of Parliament, possibly injurious to the public—a proper supply of carriages for the use of the main tramway." On the bill being amended, the case came before the Master of the Rolls (1873, "Times" Newspaper, Dec. 3), who refused to consider the balance of convenience referred to by Lord Selborne, and granted an interim injunction. On appeal the injunction was dissolved (1873, "Times" Newspaper, Dec. 18), on the ground that there was a real question, whether the company by purchasing the site of the shed and stables had not also acquired a right to pass over, and lay a tramway over, the footpath in question. It may be noted that, if a special Act confers powers on a body for an object of public benefit, those powers will not be affected by a subsequent Act, giving to other persons powers inconsistent with them for a similar purpose, in general terms which would seem to override the former powers. (*London and Blackwall Railway Co. v. Limehouse Board of Works* (1856), 3 K. & J. 123; 26 L. J. Ch. 164; *Birkenhead Docks Trustees v. Laird* (1854), 4 De G. M. & G. 732; 23 L. J. Ch. 457.) But it is otherwise where the same objects are dealt with specially in two Acts, and the powers conferred by the later Act are substantially the same as those conferred by the former. (*Daw v. Metropolitan Board of Works* (1862), 12 C. B. N. S. 161; 31 L. J. C. P. 223.) Compare also sect. 15, note (p).

Locus standi.—The provisions of this section are not regarded as sufficient protection for the minority of road authorities whose consent is dispensed with under Standing Order 22, and they will therefore be heard against a Bill. (*Glasgow Corporation Tramways Bill* (1878), 2 Cl. & R. 95.)

(q) That is to say, seven clear days, exclusive of the day on which notice is given and the day on which work is commenced. This is the meaning of the words "at least." (*R. v. Shropshire JJ.* (1838), 8 A. & E. 173; *R. v. Middlesex JJ.* (1845), 3 D. & L. 107; 14 L. J. M. C. 139; *In re Railway Sleepers Supply Co.* (1885), 29

Ch. D. 204; 54 L. J. Ch. 720.) In *St. Luke's Vestry v. North Metropolitan Tramways Co.* (1876), 1 Q. B. D. 760, 767, Blackburn, J., says that promoters may be excused from giving seven days' notice, where the work is slight or where it requires to be done promptly, but this does not disentitle the road authority to superintend and recover its expenses under the following subsection. But *quære* whether this is correct, in view of the fact that sect. 32 (2) specifically provides that no notice need be given in cases under that section, where there is urgency. It seems to follow that in the sections, where there is no such special provision, notice is necessary under all circumstances.

A clause, which is usually inserted, will be found in the model Order (*post*, p. 428) requiring the promoters, at the time of giving notice under this section, to submit to the Board of Trade and the road authority (if the promoters are not the sole road authority) a plan and statement as therein mentioned, and not to commence work until their approval has been given.

The length of notice is often extended to fourteen days by the Act or Order.

Where a company had power under their private Act to enter into an arrangement with the owners of a quay, over which there was a public right of way, for the laying of tramways thereover, and had laid such tramways, and after giving notice to the owners had broken up the roadway for the purpose of doubling their line, they, and not the owners, were held liable for damages for an accident caused by their works. (*Barham v. Ipswich Dock Commissioners* (1885), 54 L. T. 23.)

(*r*) In *St. Luke's Vestry v. North Metropolitan Tramways Co.*, *ub. sup.* (a case stated in an action to recover the amount of an award), the question arose whether certain works done by the company were done under sect. 26 or sect. 28. They had employed men to lift and relay paving stones between, and within eighteen inches on either side of, the rails, in order either to raise the stones by placing ballast underneath them, or to be enabled to raise in a similar way the sleepers of the tramrails which had sunk. The case stated further said that what was done was done also "for some other purpose directly connected with the sleepers and rails themselves." It was held that these works were done under sect. 28, and not under sect. 26, except in so far as the last words cited above from the case might imply that something was done under sect. 26, and that the road authority was not entitled to recover any sum awarded to it for expenses of superintendence in respect of any works which were done under sect. 28 and not under sect. 26.

Sometimes a clause is inserted in an Order or Act extending the provisions of sub-sects. 2, 3 and 4 of this section to works done under sects. 27 and 28.

Sect. 26.

Sect. 26.

(s) Such a bridge may be a bridge which remains vested in the owner or owners of the adjoining land or which is vested in a county council under Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 64 (1), or taken over by them under the same Act, s. 6, or is vested in the corporation of a county borough under sect. 34 (2), where the person or body in whom the bridge is vested is not the road authority; but note that a person liable to repair a bridge is a road authority within the meaning of sect. 3 of the present Act. (*Wolverhampton Tramways Co. v. Great Western Railway Co.* (1886), 56 L. J. Q. B. 190.)

Where a corporation in British Columbia had *de facto* taken over a certain bridge, over which a tramway ran, it was held liable for injury to a passenger on a tramcar, which was caused by the breaking down of the bridge through the default of an officer of the corporation. The question of the liability of the tramway company, if any, for sending a heavier weight over the bridge than it was intended to bear, was not raised. (*Victoria Corporation v. Patterson*, [1899] A. C. 615; 68 L. J. P. C. 128.)

(t) See further as to the position of the owners of a railway or tramway which is to be physically interfered with by a proposed tramway, *ante*, pp. 17, 40, 43, and Standing Orders 13a (H. L.) and 13 (H. C.).

In *Brentford Urban District Council v. London United Tramways, Ltd.* (1901), 45 So. J. 408 (so far as it is possible to make out from the report; that in "Times" Newspaper, Mar. 30, 1901, is better), the council sought to restrain the company from breaking up a road on the ground that sects. 26, 30 and 31 had not been complied with. The company's special Act gave them power to do certain works subject to sect. 30 of the Tramways Act. It was held that this did not exclude the application of sects. 26 and 31, but that the works did not fall within sect. 30, and therefore not within sect. 26, between which and sect. 30 there was no relevant distinction; that sect. 31 did apply and had been complied with.

Completion
of work and
reinstatement
of road.

27. When the promoters (*u*) have opened or broken up any portion of any road (*x*), they shall be under the following further obligations; namely,

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority (*x*) otherwise consents in writing), complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground

and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby (*y*):

2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night (*z*):
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty (*a*) not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred (*b*).

(*a*) See sects. 4 and 24.

(*x*) Defined in sect. 3.

(*y*) The usual clause dealing with the disposal of surplus material will be found *post*, p. 461. *Stockport and Hyde Highway Board v. Cheshire County Council* (1891), 61 L. J. Q. B. 22, dealt with a dispute between two rival road authorities as to the ownership under such a clause of surplus material excavated by the promoters of a tramway.

(*z*) This provision is discussed in *Cameron v. Patent Cable Tramways Corporation, Ltd.* (1885), "Times" Newspaper, Apr. 22; (1886) Jan. 14 (C. A.), for which case see notes to sect. 55.

(*a*) To be recovered summarily by sect. 56.

(*b*) It must be noted—

(i.) This section does not provide to whom the penalty is payable. This may be remedied by a clause in the Provisional Order or Act.

Sect. 27. In this the present section resembles the similar sections in Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 79, and Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 111. Contrast Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 10, 11, and Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 32, 33, in which the penalties are payable to "the persons having the control or management of the street."

(ii.) The reinstatement of the surface is expressed to be subject to the formation, maintenance or renewal of the tramway. This prevents any such question as arose in *East London Waterworks Co. v. St. Matthew, Bethnal Green* (1886), 17 Q. B. D. 475; 55 L. J. Q. B. 571, where a local authority had removed the guard boxes of stop valves which were necessary for a water company's undertaking, but which, of course, prevented the reinstatement of the pavement to its exact original condition.

(iii.) The liability to a penalty is expressed to be without prejudice to any other remedy against the promoters. This prevents the application to this section of the doctrine of *Atkinson v. Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441; 46 L. J. Ex. 775 (C. A.), and the other authorities cited in note (i) to sect. 49 (see *Broadbent v. Imperial Gas Light Co.* (1857), 7 De G. M. & G. 436; 26 L. J. Ch. 276, per Willes, J., affirmed 7 H. L. C. (11 E. R.) 600; 29 L. J. Ch. 377). The liability of promoters for accidents arising from a breach by them of this section, and for other accidents, is discussed in note (h) to sect. 55.

Repair of
part of road
where tram-
way is laid.

28. The promoters(*e*) shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority(*d*) shall direct, and to their satisfaction, so much of any road(*d*) whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway(*e*). If the promoters abandon(*f*) their undertaking(*g*), or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within

six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work (*h*); and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night (*i*): Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days' notice (*k*) to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned (*l*), and the expense (*m*) incurred by the road authority in so doing shall be repaid to them by the promoters (*n*). Sect. 28.

(*c*) See sects. 4 and 24.

(*d*) Defined in sect. 3.

(*e*) Where the promoters have made a contract with the road authority under sect. 29 for the repair of that part of the road which is here described, the liability for damage incurred by reason of non-repair is shifted to the road authority. (*Howitt v. Nottingham and District Tramways Co., Ltd.* (1883), 12 Q. B. D. 16; 53 L. J. Q. B. 21; *Allred v. West Metropolitan Trams Co.*, [1891] 2 Q. B. 398; 60 L. J. Q. B. 631 (C. A.); *Barnett v. Poplar Borough*, [1901] 2 K. B. 319; 70 L. J. K. B. 698); for these cases see note (*r*) to sect. 29, *post*.)

In *Ritchie v. Dundee Police Commissioners* (1886), 13 R. (J. C.) 63; 1 White Just. Ca. 139, the Commissioners, who had acquired tramways, were prosecuted summarily for penalties for failing to repair under this section and Dundee Street Tramways, Turnpike Roads and Police Act, 1878 (41 & 42 Vict. c. xciv.), s. 22, on the complaint of a cab-driver, who was also a ratepayer. The complaint was held to be irrelevant on the ground of want of specification of disrepair, but the Court also suggested that this section no longer applied to the case, as the Commissioners were both tramway company and road authority, and so there could be no question of the promoters failing to repair to the satisfaction of the road authority—*i.e.*, of themselves.

Sect. 28.

For a case where promoters were held not to be liable at the suit of a private person under a special Act which imposed a penalty for a breach of this section, see *Murdoch v. London Street Tramways Co.* (1879), "Times" Newspaper, Mar. 27, May 30.

The road authority are given specific power to prescribe the materials and manner of the repairs. This is consistent with the preservation of their powers by sect. 60, and has been recognised in *R. v. Croydon and Norwood Tramways Co.* (1886), 18 Q. B. D. 39; 56 L. J. Q. B. 125 (C. A.) (where the road authority had refused to approve the material suggested by the company), and in *Bristol Trams and Carriage Co., Ltd. v. Bristol Corporation* (1890), 25 Q. B. D. 427; 59 L. J. Q. B. 441 (C. A.) (where the road authority had taken up the road material, which the company were bound to maintain, and replaced it with other material). In such a case as the last, the material taken up by the road authority is their property, as it vested in them when it was in the road (see Public Health Act, 1875 (37 & 38 Vict. c. 55), s. 149). Where, through no fault of the road authority—for instance, by the inevitable effect of the traffic—the junction between the tramway track and the rest of the road has become unsatisfactory, it is suggested that it will be the promoters' duty to remedy the defect.

The road authority does not, however, seem to have any power to order the promoters to alter, at the promoters' own expense, the material which has been once approved by them, so long as the promoters keep it in proper repair. (*Leek Improvement Commissioners v. Staffordshire JJ.* (1888), 20 Q. B. D. 794; 57 L. J. M. C. 102.) Neither are the promoters bound to provide for the scavenging, cleaning, and watering of their part of the road, except in so far as is necessary for its maintenance and repair. (*R. v. Esser JJ.* (1888), 4 T. L. R. 676; *Burnley Corporation v. Lancashire County Council* (1889), 54 J. P. 279; and see *Dublin United Tramways Co., Ltd. v. Fitzgerald*, [1903] A. C. 99; 72 L. J. P. C. 52.) Compare, however, the wording of Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 148, in note (r) to sect. 29, *post*. But under similar words it has been held that the removal of snow, which rendered a road impassable, was part of the maintenance of the road. (*Amesbury Union v. Wiltshire JJ.* (1883), 10 Q. B. D. 480; 52 L. J. M. C. 64; and see *Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 66 L. J. P. C. 1, *post*, p. 234.) Whether a particular system of cleaning their track by means of tram water-vans was or was not a nuisance was discussed in *Middlesbrough Corporation v. Imperial Tramways Co., Ltd.* (1901), "Times" Newspaper, May 11. The deficiencies of this section as to the maintenance of the rails and substructure of the tramway, and its failure to provide a penalty for the default of the promoters, are rectified by the model clause, *post*, p. 428, which also provides machinery whereby the ratepayers may draw the attention of the Board of Trade to the promoters' default.

Probably, where the penalty does not provide so effectual a remedy as a mandamus directed to the promoters, or where there is no penalty provided, a mandamus to the promoters will be granted (*R. v. Severn and Wye Railway Co.* (1819), 2 B. & A. 646; *R. v. Clear* (1825), 4 B. & C. 899; 4 L. J. (O. S.) K. B. 53), unless, as a matter of construction, the remedy by penalty is held to exclude all other remedies. (See note (i) to sect. 49.)

It has now been decided by the House of Lords that it is the duty of the promoters to keep the surface, and not merely the sub-structure, in good condition and repair by sanding, reconstruction or otherwise, and to obey the directions given to them by the road authority in that behalf. Promoters who had not remedied the condition of their track, which had become slippery and worn by the traffic, were mulcted in damages for personal injuries caused by the state of their track. (*Dublin United Tramways Co., Ltd. v. Fitzgerald*, [1903] A. C. 99; 72 L. J. P. C. 52.)

As to accidents due to non-repair, see note (h) to sect. 55.

(f) See sects. 18 and 41.

(g) See note (a) to sect. 43.

(h) See note (y) to sect. 27.

(i) Compare the provisions of sect. 27.

(k) See note (q) to sect. 26. But the words "at least" do not occur here as they do in that section.

(l) Where a road authority gave notice under this part of this section that they would commence the work on a certain day and would stop the traffic on the tramway as far as was necessary, but with as little inconvenience to the promoters as possible, an interim injunction was granted to restrain them from so stopping the traffic, in view of the fact that it was possible to do the repairs without this, and that any extra expense incurred would fall upon the promoters. (*Busby v. Leeds Corporation* (1872), 52 L. T. Newspaper 289.) But, *quære*, is this correct? See sect. 32, sub-sect. 4.

(m) This provision as to expense gives no power to the road authority to recover any expenses incurred by them in superintending repairs done by the promoters themselves under this section. (*St. Luke's Vestry v. North Metropolitan Tramways Co.* (1876), 1 Q. B. D. 760; see note (r) to sect. 26.)

(n) In *Pegge v. Neath and District Tramways Co.*, [1895] 2 Ch. 508; 64 L. J. Ch. 737; compromised on appeal, [1896] 1 Ch. 684; 65 L. J. Ch. 536, the Court gave leave to the Glamorganshire County Council to levy a distress for penalties imposed on the company by a Court of summary jurisdiction in respect of non-repair of rails under this section and the company's Provisional Order. A receiver and manager was in possession of the undertaking, and therefore the leave of the Court was necessary, but the Court held generally that there was power to distrain, and sell what was distrained, and rejected the argument against it based on the

Sect. 28. alleged interference with public convenience which would arise from distraint.

In connection with the same matter, see *Ex parte Neath and District Tramways Co.* (1895), 30 L. J. Newspaper 455.

Road authority and promoters may contract for paving roads on which tramways are laid.

29. The road authority (*o*) on the one hand and the promoters (*p*) on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway (*q*) of any road (*o*) on which the promoters (*p*) shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair (*r*).

(*o*) Defined in sect. 3.

(*p*) See sects. 4 and 24.

(*q*) Apparently means the same as "carriageway" as used in the definition of "road" in sect. 3. The same word ought to have been used here, or, better still, the word ought to have been omitted altogether, as "road" alone, as defined in sect. 3, would have expressed what is required here. The promoters, of course, have no concern with the paving or repair of anything but a portion of the carriageway under sect. 28, any more than they have a right to break up anything but the carriageway. (*Hyde Corporation v. Oldham, Ashton and Hyde Electric Tramway, Ltd.* (1900), 64 J. P. 596; 16 T. L. R. 492 (C. A.).)

(*r*) In *Howitt v. Nottingham Tramways Co.* (1883), 12 Q. B. D. 16; 53 L. J. Q. B. 21, it was held that sects. 28 and 29 must be read together, and that where a contract under this section had been made, the liability for damage caused by non-repair of their part of the road, which would otherwise be upon the promoters, was transferred to the road authority, in spite of the proviso to sect. 55, whereby the promoters are to save the road authorities harmless in respect of injuries caused by the promoters' act or default. The injury could not be considered as due to the promoters' act or default where, owing to the contract, the promoters were not responsible for the repairs which caused the injury. It may be suggested that the proviso in sect. 55 refers rather to cases where the road authority is doing the promoters' repairs in default of the promoters under sect. 28, though this did not occur to the Court in the above case.

This decision was doubted *obiter* by Lord Esher, M. R., in *Steward v. North Metropolitan Tramways Co.* (1886), 16 Q. B. D. 556 (C. A.), a case in which the company was refused leave to

amend by pleading the liability of the road authority under a contract made in pursuance of this section, on the ground that it was then too late, if the company's contention proved to be correct, for the plaintiff to sue the road authority. But it was affirmed in *Allred v. West Metropolitan Trans Co.*, [1891] 2 Q. B. 398; 60 L. J. Q. B. 631 (C. A.), on a precisely similar set of facts.

In *Barnett v. Poplar Borough*, [1901] 2 K. B. 319; 70 L. J. K. B. 698, it was argued (i) that the transfer to the road authority of an obligation to repair did not render them liable for mere non-feasance, unless the Legislature had imposed such liability (*Cowley v. Newmarket Local Board*, [1892] A. C. 345; 62 L. J. Q. B. 65; *Pictou Municipality v. Geldert*, [1893] A. C. 524; 63 L. J. P. C. 37); and (ii) that the above cases only decided that the promoters were not liable, and not that the road authority was liable. These arguments were not accepted by the Court, and the question may now be taken as settled.

The effect of an agreement between a road authority and a street railway company whereby the company was relieved from all liability for the construction, renewal, maintenance, and repair in respect of all the portions of streets occupied by their track, is discussed in *Toronto Corporation v. Toronto Street Railway Co.* (1894), 23 Can. S. C. R. 198. In *Toronto Street Railway Co. v. Toronto Corporation*, [1893] A. C. 511; 63 L. J. P. C. 10, it was held that, where such an agreement existed, the company was not entitled, on compulsory purchase, to be compensated for permanent pavements laid down by the road authority under the agreement.

In *Over Darwen Corporation v. Lancashire JJ.* (1887), 58 L. T. 51; 36 W. R. 140, a tramway company's Act imposed upon them the liability to repair the whole width of the road along or across which their line was laid, if they used steam power. But power was given to them, with the sanction of the Board of Trade, to make agreements with the road authorities for such repair, such agreements not to diminish their liability under sect. 28 of this Act. One of the road authorities, without any apparent consideration, agreed with the company to repair the remainder of the road, if the company would repair the width of their track and 3 ft. 6 in. on either side, and then, as the road was a disturnpiked main road, demanded from the county authority half the expenses incurred by them under this agreement. It was held that they were entitled to do so, as the agreement, though remarkable, was in accordance with the Act.

In connection with this section attention may be drawn to Public Health Act, 1875 (38 & 39 Vict. c. 55). By sect. 147, "Any urban authority may agree with the proprietors of any canal, railway or tramway to adopt and maintain any existing or projected bridge, viaduct or arch within their district, over or under any such canal, railway or tramway, and the approaches

Sect. 29. thereto, and may accordingly adopt and maintain such bridge, viaduct or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge, viaduct or arch at the expense of such proprietors; they may also, with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge, viaduct or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto."

By sect. 148 (as amended (very badly) by S. L. R. Act, 1898 (61 & 62 Vict. c. 22)): "Any urban authority may by agreement with any person liable to repair any street or road, or any part thereof . . . take on themselves the maintenance, repair, cleansing or watering of any such street or road or any part thereof . . . within their district on such terms as the urban authority and such . . . person . . . may agree on."

In the case of urban authorities, contracts made under that Act are governed by the stringent provisions of sect. 174.

As far as tramways under this Act are concerned, it does not appear that sect. 147 is likely to have much application, as it would be remarkable to find under or over-bridges, the existence of which is due to the tramway alone, and not to the road along or across which it runs.

Provision as
to gas and
water com-
panies.

30. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters(*s*) may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connexion with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes(*t*), subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give seven days notice(*u*) to

the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or persons that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act (*x*) for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit (*y*), and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after receiving not less than forty-eight hours notice (*u*) for that purpose, which notice the promoters are hereby required to give:

2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works

Sect. 30.

belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct :

3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs (*z*) :
4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas (*a*) :
5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe (*a*) they

shall be liable to a penalty not exceeding Sect. 30.
twenty pounds for every day upon which such
supply shall be so interrupted (*b*).

(*s*) See sects. 4 and 24.

(*t*) These words are wide enough to cover any kind of property with which the promoters may find it necessary to interfere—*e.g.*, wires for conveying electric energy for any purpose, pipes for conveying hydraulic pressure, pneumatic tubes, telephone wires, &c., whether invented or thought of in 1870 or not. But it will be observed both here and further on in the section that it was not contemplated that anything would be “supplied” by such underground apparatus except gas and water. Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 15, gives an alternative statutory provision for the interference by promoters with electric lines and works connected with them. Provisions for the access of local authorities to sewers and drains will be found in the model Order, *post*, p. 429. In the Metropolis the undertakings of the water companies will be transferred as from the appointed day (June 24, 1904, or such other day as the Local Government Board may appoint) to the Water Board, to which this section will then apply. (Metropolis Water Act, 1902 (2 Edw. 7, c. 41), ss. 2, 3, 37.)

(*u*) See note (*q*) to sect. 26. It will be noted that we have in this section “seven days’ notice” merely, with no “at least” as in sect. 26; but in sub-sect. 2 we find “not less than forty-eight hours’ notice.”

(*x*) That is, by sect. 33.

(*y*) Note that the promoters are only entitled to proceed under this section “where and as far as it is necessary or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with” the apparatus of which they propose to alter the position. Cases on sect. 16 of Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), show that this limitation will be construed with strictness. (*R. v. Wycombe Railway Co.* (1867), L. R. 2 Q. B. 310; 36 L. J. Q. B. 121; *Fenwick v. East London Railway Co.* (1875), L. R. 20 Eq. 544; 44 L. J. Ch. 602; *Pugh v. Golden Valley Railway Co.* (1880), 12 Ch. D. 274; 48 L. J. Ch. 666; 15 Ch. D. 330; 49 L. J. Ch. 721 (C. A.).)

As to the meaning of the words “with as little detriment and inconvenience . . . as the circumstances will admit,” they are perhaps slightly more lenient than “as little damage as can be,” in sect. 16 of Railways Clauses Consolidation Act, 1845, or sect. 12 of Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17). These latter words have been held not to regulate in any way the nature of the works to be done, but merely the manner of doing them. (*R. v. East and West India Docks and Birmingham Junction Railway Co.* (1853), 2 E. & B. 466; 22 L. J. Q. B. 380; *Fenwick v. East London Railway Co.*, *ub. sup.*)

Sect. 30. See also *Wolverhampton Tramways Co. v. Great Western Railway Co.* (1886), 56 L. J. Q. B. 190, in note (*p*) to sect. 32. As to the jurisdiction of an arbitrator appointed to determine a difference under this section to order the alteration of existing mains, see *In re Ilford Gas Co. and Ilford Urban District Council* (1903), 88 L. T. 236.

(*z*) As, for instance, some of the Acts mentioned in note (*b*) below and the various private Acts.

(*a*) It will be noticed that no compensation or penalty is enacted for interference with the supply of anything else than water or gas —*e.g.*, electric or hydraulic energy. Yet undertakers are made liable to penalties for default in supplying electric energy under the usual clause (Electric Lighting Clauses Act, 1899 (62 & 63 Vict. c. 19), Sched. s. 30, just as gas and water companies are. The defect, though small, should be remedied by protective clauses in particular cases.

(*b*) This section as a whole is very similar in its terms *mutatis mutandis* with Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 18 to 23. The penalty is there enacted (sect. 23) to be paid to the overseers of the parish. In the present section nothing is said about the disposal of the penalty, which therefore, presumably, is dealt with like any other penalty (see sect. 56). Compare also Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 153; Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 149; Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 98; Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 6 to 12; Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28 to 34; Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 61, 62; Telegraph Act, 1863 (26 & 27 Vict. c. 112), ss. 6, 7, 8, extended by Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 8; Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 15; and, most elaborate of all, Electric Lighting Clauses Act, 1899 (62 & 63 Vict. c. 19), Schedule, ss. 17, 18.

There is nothing in the concluding words of the section, as there was in the concluding words of sect. 27, to make the penalty here provided additional to any right of action in a person injured, but sub-sect. 4 seems to make it clear that the Legislature intended it to be so (see further sect. 49, note (*i*)). For this section viewed in connection with sect. 26, see *Brentford Urban District Council v. London United Tramways, Ltd.* (1901), 45 So. J. 408; "Times" Newspaper, Mar. 30; and sect. 26, note (*t*).

The question how far the protection afforded by the Act generally, and this section in particular, is sufficient for gas, water, and similar companies, so that they are precluded from seeking the insertion of protective clauses, is discussed *ante*, pp. 35, 36. See in particular in connection with this section, *Brentford and District Tramways Bill* (1885), R. & M. 6; *Tramways Order* (No. 2), (*Bristol Tramways Extension*) *Bill* (1891), R. & S. 160; *Edinburgh Street Tramways Bill* (1893), R. & S. 262; *Airdrie and Coatbridge Tramways Bill* (1900), 2 S. & A. 3.

31. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work (*e*) in such district, or in any way affects the sewerage or drainage of such district, the promoters (*d*) shall not commence any tramway or work until they shall have given to the proper authority (*e*) fourteen days previous notice (*f*) in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars (*g*) relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works (*h*).

Sect. 31.For protection
of sewers, &c.

(*c*) In view of the scope of this section, these words must be

Sect. 31. taken to refer only to works of the various kinds specified when existing in connection with sewerage or drainage. Compare the enumeration in Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 68 and 135.

(*d*) See sects. 4 and 24.

(*e*) That is, the various local authorities, and in the Metropolis, other than the City of London, the London County Council as to main drainage and the borough councils as to other drainage; also, as to matters within their particular control, the Commissioners of Sewers and Drainage Commissioners under the Bill of Sewers (23 Hen. 8, c. 5) and subsequent statutes.

(*f*) See sect. 26, note (*g*). The present section contains no words corresponding to "at least" in sect. 26.

(*g*) In *Brentford Urban District Council v. London United Tramways, Ltd.* (1901), 45 So. J. 408; "Times" Newspaper, Mar. 30, the company sent the local authority a plan and section of the works proposed, but did not state the depth to which the works would go. It was held that in the particular case (the laying down of cableways and cables) the "necessary particulars" had been given.

(*h*) Compare with this section the similar provisions of sects. 30 and 32, and the provisions of various Acts enumerated in note (*b*) on sect. 30.

The present Act is deficient in not providing sewerage authorities specifically with the rights and powers given to local and road authorities, and to proprietors of pipes, wires, &c., by sects. 32 and 33. Those sections are probably wide enough for the purpose, but the omission is to some extent supplied by the model clause (*post*, p. 429; compare the similar clause for light railways, *post*, p. 608). This clause, however, is not wide enough to apply to commissioners of sewers and drainage commissioners, and for their protection a proper clause should be inserted in the Order or Act.

Rights of
authorities
and com-
panies, &c.
to open
roads.

32. Nothing in this Act shall take away or abridge any power to open or break up any road (*i*) along or across which any tramway is laid, or any other power vested in any local authority (*i*) or road authority (*i*) for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes (*k*), but in the exercise of such power every such local authority, road autho-

rity, company, body, or person shall be subject to the following restrictions; (that is to say,) Sect. 32.

1. They shall cause as little detriment or inconvenience to the promoters(*l*) and lessees(*m*) as circumstances admit(*n*):
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work(*o*):
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid(*p*):
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work(*q*), or shore up and secure the same at their own risk and cost during the execution of the work there(*r*): Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:
5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time speci-

Sect. 32.

fied in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters (*s*).

(*i*) Defined in sect. 3.

(*k*) See sect. 30, note (*t*). Model Order, s. 11 (*post*, p. 429), extends this section and sect. 33 to sewers and private drains of or under the control of a sanitary authority.

(*l*) See sects. 4 and 24.

(*m*) Defined in sect. 19, by which power to lease is given. Note that licensees under sect. 35 are given no rights under this section.

It is not easy to see why "lessees" is not coupled with "promoters" in sub-sect. 5, as in the other sub-sections; presumably it is because that sub-section deals with matters connected with the permanent structure of the tramway, with which the promoters, and not the lessees, are primarily concerned.

(*n*) For the effect of this restriction, see sect. 30 and note (*y*) thereto.

(*o*) As to notices, see sect. 26, note (*q*).

(*p*) In *Wolverhampton Tramways Co. v. Great Western Railway Co.* (1886), 56 L. J. Q. B. 190, the defendants, who were held to be a road authority within the meaning of the Act, removed the plaintiffs' tramway in order to reconstruct a bridge, and did not replace it. It was held that they were justified in so doing, and that the only claim which the plaintiffs could have against them would be in respect of any work done by them under sub-sect. 3 of this section, which did not comply with the provisions of sub-sect. 1, that is, which caused unnecessary detriment or inconvenience to the plaintiffs.

(*q*) See, however, *Busby v. Leeds Corporation* (1872), 52 L. T. Newspaper, 289; and sect. 28, note (*l*).

(*r*) The promoters are assisted by a section of the model Order (*post*, p. 431), which empowers them, where they think it necessary or expedient, owing to the execution of any works affecting the soil or surface of the road, to remove or discontinue their tramway, to construct and maintain temporary tramways in the same or any

adjacent road subject to the approval and regulations of the road authority.

Sect. 32.

(s) Compare and contrast with this section the provisions of sects. 30 and 31. Similar sections are sects. 60 and 61, reserving the rights of authorities to widen roads and to regulate traffic. All these are the logical consequence of sect. 57, which limits the franchise acquired by the promoters to the mere user of the road. Compare also *West Ham Local Board Bill* (1881), 3 Cl. & R. 113.

In *Bristol Tramways and Carriage Co. v. National Telephone Co.*, [1899] 2 Ch. 282; 68 L. J. Ch. 566 (compare also 42 So. J. 729), it was held that the provisions of this section overrode those of sect. 13 of Telegraph Act, 1863 (26 & 27 Vict. c. 112), whereby the telephone company, before commencing their works, would have had to obtain the consent of the person liable for the repair of any street or public road in addition to the consent of the body having the control of such street or public road, and that the telephone company did not have to obtain the tramway company's consent. The Court did not decide, though it seemed to be its opinion, that the tramway company, though only responsible for the repair of a portion of the road, was "liable for the repair" of the road within the meaning of sect. 13 of Telegraph Act, 1863. *Quære*, whether this principle would apply in cases under sect. 8 of Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), or sect. 30 of Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17). But sect. 13 of Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), definitely provides that "Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any . . . tramway without the consent of the . . . company, or person by whom such . . . tramway is repairable, unless in pursuance of special powers in that behalf inserted in the license, order, or special Act, or with the written consent of the Board of Trade, and the Board of Trade shall not in any case insert any such special powers in any license or provisional order, or give any such consent until notice has been given to such . . . company, or person by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such . . . company or person to state any objections they may have thereto." Compare Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), Sched., s. 21 (3). The obtaining of the Board of Trade's consent is governed by Electric Lighting Rule XII. The Clauses Act, Sched., s. 15, contains most stringent provisions governing the execution of works by the undertakers under such circumstances.

33. If any difference arises between the promoters(*t*) or lessees(*u*) on the one hand and any local authority(*x*) or road authority(*x*), or any gas or water com-

Difference between promoters and road authority, &c.

Sect. 33. pany, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes (*y*) may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act (*z*), in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned (*a*), or with respect to any other subject or thing regulated by or comprised in this Act (*b*), the matter in difference shall (unless otherwise specially provided by this Act (*c*)) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs (*d*).

(*t*) See sects. 4 and 24.

(*u*) Defined in sect. 19, by which power to lease is given. This section only refers to differences between promoters or lessees and the specified persons or bodies. Disputes between licensees and promoters or lessees are dealt with specially by sect. 39.

(*x*) Defined in sect. 3.

(*y*) See sect. 20, note (*t*). Model Order, s. 11 (*post*, p. 429), expressly applies this section to sewers and private drains of or under the control of a sanitary authority.

(*z*) The words "by virtue of this Act" govern the whole sentence, and not merely the words "by the promoters or lessees" which immediately precede them. (*Bristol Trams and Carriage Co., Ltd. v. Bristol Corporation* (1890), 25 Q. B. D. 427, at p. 445; 59 L. J. Q. B. 441, at p. 450 (C. A.).)

(*a*) The matters here specifically enumerated are dealt with in the preceding sections 26 to 32 inclusive. For an instance of a reference alleged to be concerned with one of such matters, see the case

stated in *St. Luke's Vestry v. North Metropolitan Tramways Co.* Sect. 33. (1876), 1 Q. B. D. 760.

(b) It has been held that the last sentence governs the whole preceding part of the section, and consequently a tramway company was refused an injunction to restrain a corporation, until the decision of a referee under this section had been given, from replacing the existing granite pavement between the tram lines by a wood pavement, on the ground that the corporation's action was not "regulated by or comprised in this Act," but was done in pursuance of their general rights and duties as road authority, preserved to them by sect. 60 of this Act. (*Bristol Trams and Carriage Co., Ltd. v. Bristol Corporation* (1890), 25 Q. B. D. 427; 59 L. J. Q. B. 441 (C. A.).)

On the other hand, it was held that there ought to be a reference under this section, where the question was whether the local authority had come to a reasonable decision in declining to allow a tramway company to lay down a particular kind of paving, the company being obliged to pave with wood or other paving to be approved by the local authority by a section of their private Act, which incorporated this part of the Tramways Act. (*R. v. Croydon and Norwood Tramways Co.* (1886), 18 Q. B. D. 39; 56 L. J. Q. B. 125.) *Quære*, whether this case is really consistent with the last cited case. The approval of the local authority, which came into question, was not in fact, so far as this case was concerned, provided for by the Tramways Act, though sect. 28 contains a very similar provision and was incorporated with the company's private Act, but by a section of the company's private Act. If so, the matter was not "regulated by or comprised in this Act" in the latter case any more than it was in the former. Contrast *Bideford Urban District Council v. Bideford, &c. Railway Co.* (1903), "Times" Newspaper, July 9.

(c) Sect. 39, which provides for a reference to two justices, only applies to disputes between promoters or lessees and a licensee, and therefore is not in point here. The only other two sections which make special provision for the settlement of differences are sects. 30 and 43, and they make practically the same provision as the present section.

(d) For similar provisions as to the appointment of referees by the Board of Trade, see Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 25; Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 28; London and North Western Railway Co. (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cxxi.), ss. 6, 7, 8; Conciliation Act, 1896 (59 & 60 Vict. c. 30), s. 2.

References under this section will be governed in England and Wales by Arbitration Act, 1889 (52 & 53 Vict. c. 49). (See the model Order, *post*.) If a similar reference is made under the provisions of a special Act (which includes a Provisional Order), it will be subject to the provisions of Board of Trade Arbitrations, &c. Act, 1874 (37 & 38 Vict. c. 40), as to costs and expenses.

Sect. 34.

PART III.

GENERAL PROVISIONS.

Carriages.

Power for promoters to use tramways with flange-wheeled carriages, &c.

34. The promoters(*e*) of tramways authorised by special Act(*f*) and their lessees(*g*) may use on their tramways carriages(*h*) with flange wheels or wheels suitable only to run on the rail(*i*) prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail(*k*).

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only(*l*).

No carriage used on any tramway which is hereafter authorised by special Act(*f*) shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side(*m*).

(*e*) See sects. 4 and 24.

(*f*) This term includes any Act or Provisional Order for a tramway incorporating Parts II. and III. of this Act (sect. 24).

(*g*) Leases are provided for by sect. 19.

(*h*) In *Plymouth, Stonehouse and Devonport Tramway Co. v. The General Tolls Co., Ltd.* (1898), 75 L. T. 467; 13 T. L. R. 74 (C. A.); 14 T. L. R. 531 (H. L.), it was held that a tramcar drawn by three horses came within the word "coach" in "coach, chariot, berlin, chaise, chair, or calash drawn by more than two horses," and not within the words "other carriage" in "waggon, wain, dray, car, cart, sledge or other carriage, drawn by three or four horses or oxen," in an Act 7 Geo. 3, c. lxxiii. s. 12.

On the other hand, it has been held that a tramcar is a "stage carriage" for the purposes of overcrowding within the meaning of Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), s. 13 (*Brian v. Aylward* (1902), 18 T. L. R. 371), and is a "stage carriage" within the meaning of Glasgow Police Act, 1866 (29 & 30 Vict. c. cclxxiii.), s. 218, and therefore must comply with the provisions regarding the conspicuous painting up of the number

of inside and outside passengers to be carried and the carrying of such passengers. (*Black v. Neilson* (1897), 2 Adam Just. Ca. 424; 25 R. 98.) Sect. 34.

It would seem that a tramcar is a "stage carriage" within the meaning of Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), s. 4, and it is the practice of the Commissioner of Metropolitan Police to license tramcars as stage carriages. But it seems, though the words of the definition would include tramcars, that the Acts did not really contemplate them—*e.g.*, Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 8, which provides that passengers shall be set down as near to the near-side as possible, and Rule 6 of the Rules issued by the Home Secretary, whereby the applicant is to bring the carriage for which he desires a licence to the police station. This would be rather hard in the case of an electrically-propelled tramcar. The same remarks apply to the Acts regulating stage coaches and carriages outside the Metropolis, 2 & 3 Will. 4, c. 120 and 3 & 4 Will. 4, c. 48, which apply both to England and to Scotland; and see the cases cited above.

A tramcar is declared by sect. 48 of the present Act to be liable to be licensed and regulated as if it were a "hackney carriage." This matter is discussed at length in the notes to that section.

It is specifically excluded from being an "omnibus" under Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), s. 2. It is the practice to charge duty on a tramcar under Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3), as on a "hackney carriage." That Act varies Revenue Act, 1869 (32 & 33 Vict. c. 14), by making a distinction for the first time between "carriages" and "hackney carriages." It has been decided (*Hickman v. Birch* (1889), 24 Q. B. D. 172; 59 L. J. M. C. 22), that an "omnibus" is a "hackney carriage" under that Act, and "carriage" is taken to mean any private carriage, while "hackney carriage" means any carriage which plies for hire. If this decision is to be taken to apply to tramcars, then it is right to charge a tramcar as a hackney carriage. But the result is peculiar, because sect. 48 of the present Act does not make a tramcar a "hackney carriage" for excise purposes, and the natural meaning of "hackney carriage" would not include tramcar (cf. Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 38), whereas the definition of "carriage," as opposed to "hackney carriage," in Customs and Inland Revenue Act, 1888, would, apart from the question of plying for hire, exactly cover a tramcar, whether driven by animal or mechanical power.

In *London Tramways Co. v. Bailey* (1877), 3 Q. B. D. 217; 47 L. J. M. C. 3, a conductor had summoned a tramway company under London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 22, for the return of a deposit, which the company alleged to have been forfeited, and for wages. The section gives a justice of the peace power to hear and determine all matters of complaint between any

Sect. 34. proprietor of a hackney carriage or metropolitan stage carriage and the driver or conductor thereof, and to order the payment of any sum of money or compensation which he may find to be payable. It was found that a tramcar was a metropolitan stage carriage, but the conductor's proceedings were held to be barred by the certificate of the company's manager, which was made binding and conclusive by the agreement entered into between the conductor and the company.

But in *Armstrong v. South London Tramways Co., Ltd.* (1891), 64 L. T. 96; 55 J. P. 370 (C. A.), where a conductor had brought an action for wages due against a tramway company in the County Court under a very similar agreement, the Court of Appeal held that an award of the manager was not binding, as the conductor had not been given a hearing before it was made (a point not taken in *London Tramways Co. v. Bailey*, a case of which the Court below disapproved, although they considered themselves bound by it), and that the agreement between the conductor and the company could not be considered a submission to arbitration so as to make the award binding. Add to the above the police court cases of *Hutchings v. Smith* and *Hunt v. London Tramways Co., Ltd.* (1877), 12 L. J. Newspaper, 386.

It is settled that the Sunday Observance Acts, 1625 and 1677 (3 Car. 1, c. 1 and 29 Car. 2, c. 7), do not make it illegal for stage-coaches to travel on Sunday. (*Sandiman v. Breach* (1827), 7 B. & C. 96; 5 L. J. (O. S.) K. B. 298.) The words in the Acts would seem to exclude tramcars also, and this has been decided on similar words in Canada. (*Attorney-General for Ontario v. Hamilton Street Railway Co.* (1895), 27 Ont. R. 49; and see, too, now *Attorney-General for Ontario v. Hamilton Street Railway Co.* (1903), 19 T. L. R. 612.)

(i) The question of rails is dealt with in note (k) to sect. 25.

(k) The exclusive user of tramways conferred upon promoters by this section is further protected by sect. 54, which prescribes a penalty for the infringement of it. The public, on the other hand, are protected by sects. 57, and 59 to 62, which strictly limit the rights of promoters over the road to such right of user as is conferred and protected by sects. 34 and 54, and they are further protected by the provisions of sect. 35 as to compulsory licences, and sect. 41 as to discontinuance.

Several attempts have been made to circumvent the monopoly conferred upon promoters.

Liverpool Tramways Co. v. Liverpool Omnibus Co. (1870), W. N. 126, arose upon a special Act, which gave the promoters an exclusive user for eighteen months only, and provided that no other persons during that period should run upon the tramways with carriages specially adapted to the rails; the right of the public to pass along, on or off the tramway with carriages having ordinary wheels was reserved. The defendants had decreased the gauge of their omnibuses, had placed the wheels under the body of the

omnibuses and had made their tyres wider than usual, but had not provided them with flanges. The tramway company's wheels had flanges. It was held that these omnibuses were specially adapted to the rails, although it was true that they were also suitable for running on ordinary roads.

Sect. 34.

It will be observed that the terms of this Act were very special, and the case has little bearing on the meaning of sects. 34, 54 and 62 of the present Act.

In *Cottam v. Guest* (1880), 6 Q. B. D. 70; 50 L. J. Q. B. 174, an omnibus proprietor had attached to the lower side of each of the fore wheels of his omnibus, which was of the same gauge as a certain tramway, small discs, which could be let down by means of a lever when the omnibus was in position on the rails of the tramway. These discs then revolved, and served the purpose of flanges in keeping the omnibus in position on the rails. It was held that the proprietor was liable to conviction under sect. 54 of this Act, inasmuch as (i.) the discs, though only extending over a small part of the circumference of the wheels, substantially converted them into flanged wheels; (ii.) though the wheels, when the discs were not let down, were suitable to run elsewhere than on the rail, yet, at the time of the breach, when the discs were let down, the wheels were "suitable only to run on the rail"; (iii.) the discs themselves were wheels "suitable only to run on the rail." These grounds, or at any rate the first two, seem certainly to be conclusive.

In *Manchester Corporation and Manchester Carriage and Tramway Co. v. Andrews* (1889), 5 T. L. R. 470, omnibuses were constructed with wheels underneath the body of the vehicle and of such a gauge as to fit the tramway rails, but the wheels were not flanged, and they were suitable for running elsewhere than on the rails, though not quite so suitable as they would have been had they been in the position of ordinary omnibus wheels. It was held that the use of such omnibuses to run along the rails was not an infringement of the promoters' exclusive user conferred by the present section, inasmuch as the wheels were not suitable to run on the rail only, but could run elsewhere.

In *Bristol Tramways Co., Ltd. v. Grindell* (1887), "Times" Newspaper, Dec. 22, the facts were similar to those of the last case, except that the tramway company themselves used wheels without flanges, which ran in a peculiar kind of grooved rail. In spite of this, the result of which was that the omnibus proprietor was using practically the same wheels and carriages as the tramway company, the Court was unwilling to grant an injunction.

The words of this section, as of sects. 54 and 62, seem to give to the promoters the exclusive user of the tramways with (i.) flanged wheels, (ii.) any other wheels suitable only to run on the prescribed rail. *Semble*, then, a user by an unauthorised person with flanged wheels, even if they were suitable to run elsewhere than on

Sect. 34. the rail (and such a thing is conceivable), would be a breach of the exclusive user. The decisions show, nevertheless, that, however suitable a wheel may be to run on the rail, so long as it is not a flanged wheel, yet it will not constitute a breach of the exclusive user if it is suitable for using elsewhere than on the rail. This is common sense; otherwise promoters might restrain or prosecute anyone who drove along the rails a vehicle which happened to have the same gauge as the tramway. But as the mechanical propulsion of tramways becomes more general, the point becomes of less practical importance. The general nature of the rights conferred on the promoters by this section is commented on in *Edinburgh Street Tramways Co. v. Lord Provost and Magistrates of Edinburgh*, [1894] A. C. 456, at pp. 463, 472—3, 485; 21 R. (H. L.) 78, at pp. 80, 85, 93; 63 L. J. Q. B. 769, at pp. 771, 775—6, 781—2, and in the tramway rating cases discussed *ante*, pp. 50 *sqq.* The rights conferred by similar words in London Street Tramways Act, 1870 (33 & 34 Vict. c. clxxi), are remarked upon in *In re London County Council v. London Street Tramways Co.*, [1894] 2 Q. B. 189, 205; 63 L. J. Q. B. 433, 442 (C. A.). It is pointed out by Lord Shand in the Edinburgh case that tramway companies acquire no right of property, but a right of user only, and by Lord Watson that promoters who are not a local authority have no power to let. Lord Watson also decides that the enactments of this section are not qualified by those of sects. 41, 42 and 44, so as to convert the promoters' right of user from a privilege personal to them into a continuing asset, of which they could dispose to the local authority.

The powers of promoters to assign their rights are discussed in note (g) to sect. 44.

It is usual for the Order or Act to contain a clause permitting the local authority, where they are not the promoters, to use the tramways at certain times for sanitary purposes, the conveyance of materials and the like. (See *post*, pp. 440, 611.)

(l) Under the usual clause (*post*, p. 432) mechanical power may be used with the consent of and according to a system approved of by the Board of Trade. We find instances of the use of steam power, cable power derived from a stationary engine, compressed air power and electric power with its various forms of application, whether by overhead trolleys, underground conduits, or surface contact. The Board of Trade has issued various regulations dealing with the various forms of power: steam power (*post*, p. 353), electric power (p. 356) (in particular the overhead trolley system (p. 363) and the surface contact system (p. 368)), and cable traction (p. 369). The Board of Trade's by-laws regulating the use of mechanical power will be found *post*, pp. 354, 367, 370.

It may perhaps be worth while still to notice the provisions of Tramways Orders Confirmation Act, 1879 (42 & 43 Vict. c. xciii.), s. 3, whereby in the case of tramways then or previously autho-

rised the Board of Trade may give a license for the experimental use of mechanical power for one year only. Otherwise the Board of Trade has no such power apart from a special Act.

Sect. 34.

The Tramways Act, and Acts and Orders made in pursuance thereof, form quite a distinct code from the Acts dealing with locomotives on highways, and vehicles driven by mechanical power along highways by virtue of the former are not in any way subject to the latter. (*Bell v. Stockton and Darlington Steam Tramways Co.* (1887), 51 J. P. 804; 3 T. L. R. 511.) See also *post*, p. 197.

Whether certain Acts of New South Wales conferred a power to use steam power upon a certain tramway was discussed by the Privy Council in *Commissioner for Railways v. Toohey* (1884), 9 A. C. 720; 53 L. J. P. C. 91.

An instance of an injunction being granted to restrain an unauthorised use of steam power will be found in *A.-G. v. Swansea Tramways Co.* (1878), "Times" Newspaper, June 20. There the tramway had been made under an old Act (44 Geo. 3, c. lv.), and the use of steam was suddenly adopted. A public nuisance was proved in the action, brought at the relation of the clerk of the County Roads Board, but the injunction was limited to the use of steam power only, and did not extend to other power. The result was that the tramway company, which had running powers over an adjoining railway worked by steam in the ordinary way, was held to be entitled to run its horse cars over the rails in the middle of the ordinary railway traffic. (*In re Swansea Improvements and Tramway Co. and Swansea and Mumbles Railway Co. and Railway Commissioners* (1880), "Times" Newspaper, April 24 (C. A.).)

(m) Where the gauge is not the standard gauge, the special clause authorising such gauge also varies this part of this section. (See the clause, *post*, p. 427.) The width of the carriages is then regulated by the Board of Trade scale, which permits carriages from eight to fourteen inches wider, according to the gauge, than those authorised by this section. (See note (i) to sect. 25.)

In some recent cases the Board of Trade have authorised, under special conditions, the use of trailing cars for the carriage of parcels and goods on tramways. (See the regulations for mechanical power, *post*, p. 364.) This sensible practice will no doubt spread with the increased use of mechanical power.

Licenses to use Tramways.

35. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic (n) in any district (o) it shall be represented in writing to the Board of Trade by the local

Licenses to use the tramway may in certain events be granted to third parties by the

Sect. 35. authority(*o*) of such district, or by twenty inhabitant ratepayers of such district, or by the road authority(*o*) of any road(*o*) in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, *primâ facie*, the case is one for inquiry) direct an inquiry by a referee under this Act(*p*) into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the Board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters(*q*) or their lessees(*r*) for such traffic as is authorised by the special Act, with carriages(*s*) to be approved by the Board, subject to the following provisions, conditions, and restrictions; that is to say,

1. The license shall be for any period not less than one year nor more than three years from the date of the license, but shall be renewable by the Board, if they upon inquiry think fit:
2. The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the Board, having reference to the cause for granting the license, shall think right:
3. The license shall direct the number of carriages which the licensee or licensees(*t*) shall run upon such tramway, and the mode in which and times at which such carriages shall be run:
4. The licenses shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorised for that purpose by the promoters, or by their lessees, to ride free of charge in

or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey (*u*):

Sect. 35.

6. The Board of Trade may at any time after the granting of any license revoke, alter, or modify the same for good cause shown to them.

(*n*) See sect. 25 and note (*m*) thereto.

(*o*) Defined in sect. 3.

(*p*) Such inquiries are governed by sect. 63.

(*q*) See sects. 4 and 24.

(*r*) Defined in sect. 19.

(*s*) See sect. 34.

(*t*) Licensees under this section are clearly contrasted with and are not included in the term "promoters." (*Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36, at p. 51; 64 L. J. Ch. 481, at p. 483 (C. A.).) As "promoters" covers also permitted assigns under sects. 43 and 44 (*Id. ib.*), this section would also be applicable, if the need arose, even where tramways had been taken over and were being worked by a local authority.

The machinery provided by this and the following sections would render the remarkable provision of sect. 19, as to leaving tramways open to the public, workable, but it is not clear how they could be made to apply; there is nothing in the Act to assist it. Under Military Tramways Act, 1887, s. 11 (*post*, p. 293), a local authority may apply to the Board of Trade for a Provisional Order licensing them to use a military tramway. It would be very difficult to apply the provisions as to licenses on anything but a tramway worked by animal power. It is obvious that where it became necessary to regulate a licensee's use of the promoters' or lessees' electric wires and generating station or other source of power, and the tolls to be paid by him for such use, great difficulties might arise.

(*u*) Licensees and their officers and servants are not given power of detention or arrest by sect. 52, and therefore that power would have to be exercised, if necessary, by the person referred to in this sub-section or other officer or servant of the promoters or lessees.

36. If on demand any licensee (*x*) fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters (*y*) or their lessees (*z*), to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such

In default of payment of tolls licensee's carriages may be detained and sold.

Sect. 36. promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

(*x*) See sect. 35, note (*t*).

(*y*) See sects. 4 and 24.

(*z*) Defined in sect. 19.

Licensees to give account of passengers carried by them.

37. Every licensee (*a*) shall on demand give to an officer or servant authorised in that behalf by the promoters (*b*) or their lessees (*c*) entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

(*a*) See sect. 35, note (*t*).

(*b*) See sects. 4 and 24.

(*c*) Defined in sect. 19.

Licensees not giving account of passengers carried liable to penalty.

38. If any such licensee (*d*) fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters (*e*), or to their lessees (*f*) entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

(*d*) See sect. 35, note (*t*).

(*e*) See sects. 4 and 24.

(*f*) Defined in sect. 19.

39. If any dispute arise concerning the amount of the tolls due to the promoters (*g*) or to their lessees (*h*) from any licensee (*i*), or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained (*k*), the same shall be settled in England by two justices (*l*), and in Scotland by the sheriff or two justices, and it shall be lawful for the promoters or their lessees in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof.

Sect. 39.

Disputes as to amount of toll to be settled by justice.

(*g*) See sects. 4 and 24.

(*h*) Defined in sect. 19.

(*i*) See sect. 35, note (*t*).

(*k*) *I.e.*, under sect. 36.

(*l*) The dispute would be brought before the justices presumably by an application by one party, followed by a summons issued to the other party, as in cases of disputed compensation payable to yearly tenants under Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 121, or as in disputes respecting accommodation works under Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 69. For forms, see Oke's Magisterial Formulist.

Similar provisions will be found in Telegraph Act, 1863 (26 & 27 Vict. c. 112), s. 15, and in Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 9, as to the altering and breaking up of streets.

40. Every licensee (*m*) shall be answerable for any trespass or damage done by his carriages or horses (*n*), or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices, and in Scotland before the sheriff or two justices, either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters (*o*), lessees (*p*), or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds (*q*).

Owners of carriages liable for damage done by their servants.

Sect. 40. (m) See sect. 35, note (t).

(n) But apparently not for damage done by his use of any motive power other than horses.

(o) See sects. 4 and 24.

(p) Defined in sect. 19.

(q) The policy of this section is rather peculiar. The "servant or other person" is to be "convicted" (a singularly inappropriate word) of trespass or damage by confession or by a credible witness (a now unnecessary addition which has been repealed in the similar section of Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), and then the licensee is to pay the damage ascertained by the justices up to 50*l.* If the damage is ascertained to be more than 50*l.*, who pays the balance? Presumably the person convicted. This is all without prejudice to the right of action against the licensee or any other person. But presumably, if judgment were given against the licensee in an action, after he had paid his 50*l.*, or fraction of 50*l.*, on the proceedings before justices, he would be given credit for the amount he had so paid.

Discontinuance of Tramways.

Tramways to
be removed in
certain cases.

41. If at any time after the opening of any tramway in any district (*r*) for traffic (*s*) the promoters (*t*) discontinue (*u*) the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control (*x*) of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control (*y*)), and such discontinuance is proved to the satisfaction of the Board of Trade (*z*), the said Board, if they think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority (*r*) in manner by this Act provided (*a*). Where any such order has been made, the road authority (*r*) of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Board of

Trade, remove the tramway or part of the tramway so discontinued (*b*), and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorised officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed (*c*), either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

(*r*) Defined in sect. 3.

(*s*) See sect. 25 and note (*m*) thereto. "Traffic" here must mean the same as "public traffic."

(*t*) See sects. 4 and 24.

(*u*) For other references to discontinuance or abandonment, see sects. 18 and 28.

(*x*) A failure on the part of lessees to work the tramway would be, in most cases, a circumstance beyond the control of the promoters, and therefore it would seem that the Board of Trade would have no power, in such a case, to issue an order under this section.

(*y*) See sect. 42 and notes thereto.

(*z*) There is no provision here for a local inquiry to be held under sect. 63, as in the similar circumstances contemplated in sects. 35 and 42; but, no doubt, should the case arise, the Board of Trade would adopt this method of satisfying itself before issuing an order as here provided.

(*a*) That is, under sect. 43. These words, on which a great deal

Sect. 41. of unnecessary stress has been laid, are discussed in note (q) to sect. 43. See also note (m) to sect. 43.

The road authority are not obliged to remove the tramway, but no one has any power to work it, apart from special legislation, except the lessees of a local authority which has purchased it within three months under sect. 43. If the road authority allowed the tramway to remain, and it was not transferred to the local authority, the property in the materials apparently would remain in the promoters. *Quere* whether it could be regarded as a nuisance.

(b) Compare these provisions as to removal and reinstatement with the similar provisions of sect. 28.

Where a special Act, by a remarkable provision, empowered a local authority to require the removal of a tramway at any time within five years, the Court refused an injunction to prevent their exercising such power, though no reason for its exercise was given by them, and the company had spent large sums on the tramway and on stables for their system, to which the piece of tramway in question provided the only access. It was held that the local authority had not given the company any pledge of permanency, and that the company had spent its money at its own risk. (*Liverpool Tramways Co. v. Toxteth Park Local Board* (1876), W. N. 145, more fully reported in "Times" Newspaper, April 13.)

(c) There ought to be some provision by which these materials could be used by the road authority for reinstating the road, if they wished, and their value taken into account against the amount due from the promoters. The Act, as it stands, only gives them power to sell, not to use, these materials. But perhaps the road authority could agree with the promoters that the value of the materials should be regarded as sufficient to pay the cost of restoring the road, and that the promoters should hand over the materials and be under no further liability. With this section generally compare Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), Sched., ss. 63—68.

Insolvency of Promoters.

Proceedings
in case of
insolvency of
promoters.

42. If at any time after the opening of any tramway in any district (d) for traffic (e), it appears to the local authority (d) or the road authority (d) of such district that the promoters (f) of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board of Trade, the Board of Trade may direct an inquiry by a referee into the

truth of the representation (*g*), and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided (*h*); and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section (*i*). Sect. 42.

(*d*) Defined in sect. 3.

(*e*) See sect. 25 and note (*m*) thereto. "Traffic" here must be equivalent to "public traffic."

(*f*) See sects. 4 and 24.

(*g*) Such an inquiry is governed by sect. 63.

In *In re Pontypridd and Rhondda Valleys Tramways Co., Ltd.* (1889), 58 L. J. Ch. 536; 37 W. R. 570, the Court refused to restrain an inquiry to be held under this section, on the application of the liquidator of a company, which had in fact constructed and worked the tramway and had been given notice of the inquiry, on the grounds that (i.) the company were not "promoters," either as defined by the Act or by virtue of a purchase with the consent of the Board of Trade under sect. 44, and so had no interest in the inquiry, (ii.) the inquiry was not a proceeding against the company within the meaning of Companies Act, 1862 (25 & 26 Vict. c. 89), s. 87. *Quære* whether the Court has jurisdiction, under any circumstances, to restrain an inquiry duly instituted under this section.

(*h*) That is, under sect. 43. The same words occur in sect. 41. They are discussed in note (*g*) to sect. 43, *post*, p. 183.

(*i*) See sect. 41 and notes (*a*) and (*c*) thereto.

Winding-up and Enforcement of Securities.—A tramway company may be wound up in the ordinary way, if registered under the Companies Acts (as even a railway may be (*In re Ennis and West Clare Railway Co.* (1879), 3 L. R. I. 187)), or it may be wound up as an unregistered company, if it consists of more than seven members and is not registered under the Companies Acts, by virtue of sect. 199 of Companies Act, 1862 (25 & 26 Vict. c. 89), inasmuch as it is not a railway company within the exception contained in

Sect. 42. that section. (*In re Brentford and Isleworth Tramways Co.* (1884), 26 Ch. D. 527; 53 L. J. Ch. 624; *In re Borough of Portsmouth (Kingston, Fratton and Southsea) Tramways Co.*, [1892] 2 Ch. 362; 61 L. J. Ch. 462.) This principle applies also to tramway companies of more than seven members incorporated by Order in Council under the Tramways (Ireland) Acts. (*In re Portstewart Tramway Co., Ex parte O'Neill*, [1896] 1 I. R. 265.)

The fact that the preamble of the company's Act states that the construction of the tramway would be to the public advantage does not preclude a winding-up order (*In re Borough of Portsmouth, &c. Tramways Co., ub. sup.*, at p. 367; *In re Barton-upon-Humber and District Water Co.* (1889), 42 Ch. D. 585; 58 L. J. Ch. 613), though the circumstance will make the Court more careful not to make the order until it is assured that such an order is the best or only way out of the company's difficulties. (*In re Exmouth Docks Co.* (1873), L. R. 17 Eq. 181; 43 L. J. Ch. 110; *In re Company or Fraternity of Free Fishermen of Faversham* (1887), 36 Ch. D. 329; 57 L. J. Ch. 187 (C. A.)) Thus orders have been made for winding-up a statutory ferry company (*In re Isle of Wight Ferry Co.* (1865), 2 H. & M. 597; 34 L. J. Ch. 194), a statutory telegraph company (*In re Electric Telegraph of Ireland* (1856), 22 Beav. 471; 24 L. J. Ch. 614), a statutory canal company (*In re Proprietors of the Basingstoke Canal* (1866), 14 W. R. 956), and a statutory water company (*In re Barton-upon-Humber and District Water Co., ub. sup.*). Neither will an order be refused because the undertaking could not be sold without an application to Parliament; such an application may be sanctioned in chambers. (*In re Barton-upon-Humber and District Water Co., ub. sup.*; *In re Bradford Navigation Co.* (1870), L. R. 10 Eq. 331; 39 L. J. Ch. 161; appeal dismissed on a preliminary objection, L. R. 5 Ch. 600; 39 L. J. Ch. 733.) In the case of a tramway company it might be possible to avoid an application to Parliament by a sale with the consent of the Board of Trade under sect. 44. A sale to directors of the company was approved in *In re Yarmouth and Gorleston Tramways* (1881), 25 So. J. 794. The question of the application of the deposit is discussed in note (g) to sect. 12, and in the notes to the Parliamentary Deposits and Bonds Act, 1892 (*post*, p. 297). The application for the order may be made by the company itself (*In re Bradford Navigation Co., ub. sup.*), by other persons entitled in the ordinary way to ask for such an order, and by debenture-holders in virtue of their rights as ordinary creditors, in spite of their previous exercise of their remedies as debenture-holders. (*In re Borough of Portsmouth, &c. Tramways Co., ub. sup.*; *In re Portstewart Tramway Co., ub. sup.*)

On the other hand, it is now settled by *Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36; 64 L. J. Ch. 481, that debenture-holders are, in the event of default by the company, entitled only to the appointment of a receiver of the undertaking of

the company and the net earnings thereof, and not to an order for the sale of the undertaking or to the appointment of a manager. The Court fully recognises the jurisdiction to wind up tramway companies, even on the application of debenture-holders, but, in spite of this, applies the principles laid down in *Gardner v. London, Chatham and Dover Railway Co.* (1867), L. R. 2 Ch. 201; 36 L. J. Ch. 323, with regard to a statutory railway company which cannot be wound up, and in *Blaker v. Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399; 58 L. J. Ch. 497, with regard to a statutory water company. Debenture-holders, it points out, are not "promoters" within the meaning of the Act, and neither have the right to exercise the statutory powers of promoters nor are liable to perform their statutory duties.

This decision must be regarded as overruling the following earlier cases: *Hope v. Croydon and Norwood Tramways Co.* (1887), 34 Ch. D. 730; 56 L. J. Ch. 760; *Bissill v. Bradford Tramways Co., Ltd.* (1891), W. N. 51; "Times" Newspaper, Mar. 7 (in this case, as appears from *Bissill v. Bradford Tramways Co.* (1893), 9 T. L. R. 337, an order for sale was made); *City of London Contract Corporation v. Coventry and District Tramways Co.* (1892), not reported; and *Bartlett v. West Metropolitan Tramways Co.*, [1893] 3 Ch. 437; [1894] 2 Ch. 286; 63 L. J. Ch. 208, 519. In none of these, however, was there any strenuous opposition to the application. See also *Pegge v. Neath District Tramways Co.*, [1895] 2 Ch. 508; 64 L. J. Ch. 737; [1896] 1 Ch. 684; 65 L. J. Ch. 536 (C. A.). But *quære* whether, if the Board of Trade consented, the promoters might not sell to their debenture-holders under sect. 44, and the latter, having thus become promoters, might sell, with the Board of Trade's consent, to someone else. This manœuvre, however, could not be executed against the will of the promoters.

Purchase of Tramways.

43. Where the promoters(*k*) of a tramway in any district(*l*) are not the local authority(*l*), the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made

Future purchase of undertaking by local authority.

Sect. 43. by the Board of Trade under either of the two next preceding sections (*m*), with the approval of the Board of Trade (*n*), by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking (*o*), or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking (*o*), or any compensation for compulsory sale, or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant (*p*) of the promoters suitable to and used by them for the purposes of their undertaking (*o*) within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking (*o*) sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect to the undertaking (*o*) sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a Provisional Order under this Act, and in reference to the same they shall be deemed to be the promoters (*q*).

No such resolution shall be valid unless a month's previous notice (*r*) of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two thirds of the members constituting such local authority are present and vote at the meeting,

and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter(*s*); and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any Provisional Order obtained by them under this Act(*t*).

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board of Trade may by Provisional Order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses(*t*).

Every such Provisional Order shall be confirmed in like manner as a Provisional Order under the authority of Part I. of this Act, and until such confirmation such Provisional Order shall not have any operation(*u*).

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts(*x*).

(*k*) See sects. 4 and 24.

(*l*) "Local authority" is defined in sect. 3. It is submitted that

Sect. 43. members "constituting" such local authority must mean "composing at the time" and not "composing the full legal number of." Compare Light Railways Act, 1896, Sched. I. .

(*m*) Under sect. 41 the powers of the promoters cease and determine from the date of the order. Under sect. 42 the powers do not determine till six months after such date. The local authority, then, in cases under sect. 41, is expressed to be purchasing powers which are non-existent, and by sect. 43 these powers are transferred to them. This seems somewhat clumsy. Moreover, under sect. 41 the road authority may remove the tramway two months after the Board of Trade's order, on a certificate from the Board of Trade that that period has expired. If, then, the local authority, not being identical with the road authority, delays to give notice to purchase till the last month of the three months allowed them, the road authority may have left no tramway for them to purchase.

(*n*) The Board of Trade is inclined, and it is submitted rightly (compare *A.-G. v. Bournemouth Corporation*, [1902] 2 Ch. 714, at pp. 726, 731, 734; 71 L. J. Ch. 730, at pp. 735, 737—8, 739), to regard its approval as a condition precedent to the issue of the notice, and to refuse to ratify by a subsequent approval a notice which has already been issued. (*Gosport Case*, 1901.) This is a very reasonable view, for the section obviously intends to give the Board of Trade complete control over the exercise of this option to purchase, and it ought to be able to exercise such control at the moment when the notice is issued, and not some time afterwards, when the value and other circumstances of the tramway, with regard to which notice to purchase has been given, may have completely changed. The Board, therefore, insists that the notice of requirement and its own approval must both be given within the six months limited by this section. (*Gosport Case*, 1901.) Where, however, a notice has been issued without the Board of Trade's approval, and the Board of Trade has refused to ratify, but the six months has not yet expired, there seems to be no reason why the local authority should not obtain the approval of the Board to a fresh notice, and issue that within the time limited by this section.

(*o*) This word occurs in this Act only in the present section and in sect. 44. Its use in other Acts is valuable only as an illustration, but reference may be made to Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 2, and Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 2, where it is expressed to mean "the undertaking or works, of whatever nature, which shall by the special Act be authorised to be executed," and to sect. 38 of the latter Act, whereby the company is empowered to mortgage its undertaking. The meaning of "undertaking" in this last section was discussed by Cairns, L. J., in *Gardner v. London, Chatham and Dover Railway Co.* (1867), L. R. 2 Ch. 201, 216; 36 L. J. Ch. 333, 329, 330 (compare *Stagg v. Medway (Upper) Navigation Co.*, [1903]

1 Ch. 169; 72 L. J. Ch. 177 (C. A.), and he concluded that it meant the whole of the railway, when in operation; that it did not mean the ingredients of the railway, but the completed work, as a living and going concern, or a "fruit-bearing tree." This was adopted by Kay, J., in *Blaker v. Herts and Essex Waterworks Co.* (1889), 41 Ch. D. 399; 58 L. J. Ch. 497. See further, as to the meaning of the word, *Doe d. Myatt v. St. Helen's and Runcorn Gap Railway Co.* (1841), 2 Q. B. 364; 11 L. J. Q. B. 6; *Hart v. Eastern Union Railway Co.* (1852), 8 Ex. 116; 22 L. J. Ex. 20; *In re Florence Land and Public Works Co.* (1878), 10 Ch. D. 530; 48 L. J. Ch. 137 (C. A.); *Wickham v. New Brunswick and Canada Railway Co.* (1865), L. R. 1 P. C. 64; 35 L. J. P. C. 6. Similar descriptions are to be found in Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 2, and Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 2, both extended by Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70), s. 3.

In Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 3, "undertaking" is defined as "the whole or any part of the electric and other telegraphs, wires, posts, pipes, tubes, and other works, instruments, materials, lands, tenements, hereditaments, and buildings, parliamentary, prescriptive, and other rights, powers, privileges, patents and all other property whatsoever of any company, corporations or persons" as therein mentioned. Compare with this the definition in Southampton Corporation Tramways Act, 1897 (60 & 61 Vict. c. cxxvi.), *post*, p. 185. In the model Tramway Order, sect. 3 (*post*, p. 424), we find, "The expressions 'the tramways' and 'the undertaking' mean respectively the tramways and the works and the undertaking by this Order authorised." See also the model Light Railway Orders, *post*, pp. 550, 587. The meaning of "the undertaking" in the present section was stated by Lord Watson, in *Edinburgh Street Tramways Co. v. Lord Provost and Magistrates of Edinburgh*, for which case see *post*, p. 181, to be "all the real and moveable property belonging to the promoters necessary for conducting tramway traffic, together with all rights and interests in or connected with such property which belong to the promoters, and are capable of being transferred from them to the purchaser." He continued: "I do not think the word can be reasonably construed so as to include any property, or any right or interest, which does not belong to the promoters, and does not pass from them to the purchaser under the compulsory contract of sale." It seems, then, that, in the abstract, "undertaking" would not only include the real and personal property of the promoters, but also their statutory powers; but, in the present section, where it is a question of purchasing "the undertaking," that expression can only cover so much as is capable of being purchased, and inasmuch as the powers of the promoters do not pass to the purchaser by virtue of the purchase, but by virtue of the section itself (subject to

Sect. 43. the limitation as to working contained in sect. 19), it follows that "the undertaking," for this purpose, does not include such powers.

There is, however, another and very important difficulty connected with the expression, namely, how much does it include in the case of promoters whose tramways and powers arise not under one but under several Orders or Acts?

Clauses are often inserted (see model Order, *post*, p. 427) making a subsequent tramway one "undertaking" with a previous tramway or tramways, either for purposes of purchase or generally. But, as regards purchase, it was decided, in *North Metropolitan Tramways Co. v. London County Council* (1896), 60 J. P. 23, affirming (1895), W. N. 91; 72 L. T. 586; 43 W. R. 552; 59 J. P. 697, that, even where the various Orders of the company contained clauses to the same effect as the model clauses, and incorporated the present section, the local authority was entitled to purchase the "undertaking" constituted under each Order separately as the time limited for each such purchase under this section arose. This principle of the separation of undertakings under one company will also apply to prevent the expenditure of capital authorised for one undertaking on another undertaking; compare the case disclosed in *Attorney-General v. North Metropolitan Tramways Co.*, [1892] 3 Ch. 70; 61 L. J. Ch. 693 (only reported on a point as to interrogatories). This is in accordance with the ordinary doctrine of *ultra vires*; where, however, a claim or anything else arises from one of the separate undertakings alone, but by its nature affects the company as such, it will go to all the separate undertakings of the company, and not only to that from which it primarily arose. Thus, where a contractor for the original line of a railway company had recovered judgment against the company, he was held to be entitled to an order for sale of surplus lands which had been extended by him, though these lands had been acquired under the powers of a subsequent Act which authorised an additional line, and declared the two undertakings to be financially distinct; and James, L. J., observed: "A company, like any other debtor, is bound to pay its debts, and cannot escape from this obligation by saying that its property, which the creditor seeks to attach, ought, as between different classes of shareholders, to be applied in a particular way." This was, of course, without prejudice to any proceedings by one class of shareholders against the other. (*In re Ogilvie* (1871), L. R. 7 Ch. 174; 41 L. J. Ch. 336.) Contrast *In re West Donegal Railway Co.* (1890), 24 Ir. L. T. R. 42. Similarly, in the case of a claim founded on tort (see note (h) to sect. 55), the whole of the company's property, to whatever undertaking it belongs, will be liable.

With reference to the application of the Parliamentary deposit, it has been held that "creditors" in sect. 1 (2) of Parliamentary Deposits and Bonds Act, 1892 (*post*, p. 301), means the general

creditors of the company, and not merely the creditors of the particular undertaking in respect of which the deposit was made. (*Ex parte Bradford and District Tramways Co.*, [1893] 3 Ch. 463; 62 L. J. Ch. 668; which is not affected on this point by *Turpin v. Somerton*, *ſc. Tramway Co.* (1900), W. N. 94.)

Sect. 43.

For a case where a direction that charges should be reasonable was held to apply to all a company's railways, and not merely to the undertaking authorised by the Act in which the direction occurred, see *Garton v. Bristol and Exeter Railway Co.* (1860), 4 H. & N. 33, 831; 8 H. L. C. (11 E. R.) 477; 28 L. J. Ex. 169; 30 L. J. Q. B. 273; 30 L. J. Ex. 241.

(*p*) In *Yarmouth v. France* (1887), 19 Q. B. D. 647; 57 L. J. Q. B. 7, Lindley, L. J., defined "plant" to include "whatever apparatus is used by a business man for carrying on his business,—not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business: see *Blake v. Shaw* (1860), Johns. 732." Compare with this the elaborate definition of "plant" in Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16. The definition in *Yarmouth v. France* was extended, by the remarkable decision of the Court of Appeal in *Thompson v. City Glass Bottle Co.*, [1902] 1 K. B. 233; 71 L. J. K. B. 145, to a machine which had formerly been used, but had broken down and was no longer in use. Probably this extension could not be made to apply to the present section in view of the words "suitable to and used by them for the purposes of their undertaking." The two last-mentioned cases were decided on Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, sub-s. 1. *Yarmouth v. France* decided that a horse was "plant connected with or used in the business of the employer" within the meaning of that sub-section. The same conclusion was arrived at specifically in the case of a horse used in working a tramway in *Haston v. Edinburgh Street Tramways Co., Ltd.* (1887), 14 R. 621.

But, on the other hand, a cab proprietor's horses have been, somewhat curiously, held not to be plant within the meaning of Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 6 (2). (*London and Eastern Counties Loan and Discount Co. v. Creasey*, [1897] 1 Q. B. 768; 66 L. J. Q. B. 503 (C. A.).) That a tramway itself is a "fixture" for the purposes of a bill of sale appears from *In re Armytage* (1880), 14 Ch. D. 379; 49 L. J. Bank. 60.

(*q*) The interpretation of this portion of the section (with which contrast Tramways (Scotland) Act, 1861, s. 17, *post*, p. 286) is governed by the decisions of the House of Lords (Lord Herschell, L. C., Lords Watson and Shand, Lord Ashbourne dissenting) in the cases (heard together) of *Edinburgh Street Tramways Co. v. Lord Provost and Magistrates of Edinburgh*, [1894] A. C. 456; 21 R. (H. L.) 78; 63 L. J. Q. B. 769, affirming 21 R. 488; and

Sect. 43. *London Street Tramways Co. v. London County Council*, [1894] A. C. 489; 63 L. J. Q. B. 769, affirming [1894] 2 Q. B. 189; 63 L. J. Q. B. 433 (C. A.). These decisions may be summarized as follows:—

(i.) On a sale to a local authority, the local authority becomes entitled to the exclusive use of the tramway, not by transference from the promoters, but by virtue of the statute alone, and the statute converts what was a terminable right in the promoters into a permanent right in the local authority. (Per Lord Herschell, L. C., at L. R., pp. 463—5; R. (H. L.), pp. 80—1; L. J., pp. 771—2. Lord Watson at L. R., pp. 472—3; R. (H. L.), pp. 85—6; L. J., pp. 475—6; and Lord Shand at L. R., pp. 487—8; R. (H. L.), pp. 94—5; L. J., p. 783.)

(ii.) The word “tramway” is not synonymous with “undertaking,” but means in this section, as in other parts of the Act, the structure laid down on the highway plus the proprietary rights attached to it, but nothing more; hence its collocation with “lands, buildings, works, materials and plant.” (Per Lord Herschell at L. R., p. 464; R. (H. L.), p. 80; L. J., pp. 471—2. Lord Watson at L. R., pp. 469, 471; R. (H. L.), pp. 83, 85; L. J., pp. 773, 775. Lord Shand at L. R., p. 488; R. (H. L.), p. 95; L. J., p. 783.)

(iii.) “Value,” it is true, does not mean the same as “price” (compare *Stockton and Middlesbrough Water Board v. Kirkleatham Local Board*, [1893] A. C. 444; 63 L. J. Q. B. 56); but in this section it is to be strictly governed by, and calculated according to, the succeeding words. (See Lord Herschell at L. R., p. 465; R. (H. L.), p. 81; L. J., p. 772.) It therefore has in this section an “artificial or arbitrary sense,” in the words of Lord Selborne, L. C., in *Dobbs v. Grand Junction Waterworks Co.* (1883), 9 A. C. 49, 58; 53 L. J. Q. B. 50, 54.

(iv.) “Exclusive of any allowance for past or future profits” must mean (although present profits are not mentioned) the same as “exclusive of any profits past, present or future,” because there is nothing tangible which can be called “present profits”; all profits must be either past or future. (Per Lord Herschell at L. R., p. 466; R. (H. L.), pp. 81—2; L. J., p. 773. Lord Watson at L. R., p. 475; R. (H. L.), p. 87; L. J., p. 777.)

(v.) Consequently no question of rental value can be allowed to enter into the calculation of the purchase price, because rental value must be based on a consideration of profits. (Per Lord Herschell at L. R., p. 466; R. (H. L.), p. 81; L. J., pp. 772—3. Lord Watson at L. R., pp. 475—6; R. (H. L.), pp. 87—8; L. J., p. 777. Lord Shand at L. R., p. 488; R. (H. L.), p. 95; L. J., p. 783.) Thus the cases relating to the rating of tramways and other hereditaments (*ante*, pp. 50 *sqq.*) are excluded from the discussion.

(vi.) The result is that the amount to be paid in compensation is

to be measured by what it would cost, at the date of the sale, to construct the tramway lines, subject to a proper deduction in respect of depreciation, but with no allowance for the rights, powers and privileges of the promoters. (Per Lord Herschell at L. R., p. 466; R. (H. L.), p. 82; L. J., p. 773; Lord Watson at L. R., p. 476; R. (H. L.), p. 88; L. J., p. 777; Lord Shand at L. R., pp. 487, 488; R. (H. L.), p. 95; L. J., p. 783.)

A good deal of trouble has been expended in endeavouring to show that these decisions are wrong, but it seems somewhat futile for a text-book to criticise the irreversible decisions of the Final Court of Appeal, especially when the writer, if he may respectfully say so, is convinced that they are right.

It is true that an attempt was made in *London Tramways Co. v. London County Council*, [1898] A. C. 375; 67 L. J. Q. B. 559, to obtain a reconsideration of the question, but that case never proceeded beyond an unsuccessful attempt to persuade the House that it had power, otherwise than by a judicious drawing of distinctions, to reverse its own decision.

The criticisms rest partly on inadmissible appeals to the history of the Act on its passage through Parliament, and partly on the following grounds:—(i.) That there were special circumstances in the above cases which prevented them from being clear decisions on the point of law. The only special circumstances seem to have been agreements as to the term of purchase of the matters mentioned in the section other than the tramway. There were also, in the London case, one or two other immaterial points of agreement. These facts cannot affect the matter. No question arose as to the meaning of the “then value” of the lands, buildings, works, materials and plant, and the inclusion of these in the case could not have affected the decision. Moreover, the fact that it was possible to give judgment in both cases together shows that there was no material peculiarity in either (compare Lord Watson at L. R., p. 467; R. (H. L.), p. 82; L. J., p. 773).

(ii.) That the words in sects. 41 and 42, “unless the same (*i.e.*, the powers) are purchased by the local authority in manner by this Act provided,” *i.e.*, by sect. 43, show that the local authority was intended to pay something for the powers. Now these words are merely words of reference, not of substance, and it would be most irrational to employ them to modify the meaning, or even to assist the interpretation, of the section to which they refer (compare Lord Herschell at L. R., p. 467; R. (H. L.), p. 82; L. J., p. 773).

Besides, as has been already pointed out in note (*m*) above, though the point does not seem to have been presented to the House of Lords, the powers, in the case of sect. 41, appear to have already ceased to exist at the time when the local authority is to purchase them, and therefore are not purchasable as such, though the section contemplates their revival in favour of the local authority on the

Sect. 43. completion of such purchase. How, then, can the words of sect. 41 be used to show that the purchaser is to pay something for the powers under sect. 43?

(iii.) That the purchasers acquire the powers and therefore ought to pay for them. But, even on general principles of compensation, quite apart from the present section, the value to the seller, and not the value to the purchaser, is to be looked at. (*Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; 40 L. J. Q. B. 1; but see *In re City and South London Railway Co. and St. Mary Woolnoth*, [1903] 67 J. P. 221; 19 T. L. R. 363 (C. A.)) Now to the promoters the value of these powers while they can be exercised is great, but the value of them as a saleable article at the times when they can be compelled to sell them to a local authority under sect. 43 is *nil*, inasmuch as on such sale they terminate automatically so far as the promoters are concerned, not by any conveyance or act of the promoters but by virtue of the section. To maintain the contrary would be no more reasonable than to maintain that the local authority should pay the promoters the full value of the permanent powers which they acquire on purchase by virtue of the statute, although the powers which the promoters have, and which it is alleged they can sell, are only terminable powers.

Where by a Canadian Act, coupled with an agreement between the promoter and the local authority, and a resolution and by-law of the latter, the promoter was granted the exclusive right and privilege to make street railways for thirty years, subject to purchase by the local authority at the end of that time or at the end of each period of five years thereafter, and the local authority gave notice to purchase at the end of thirty years, it was held that the arbitrators were right in not allowing anything for the value of any privilege or franchise extending beyond the thirty years, and that the same principle applied to extensions of the original system. It was also held that where the promoters had commuted their obligation to pave and repair their track with the local authority for an annual payment, they were not entitled to any compensation in respect of paving done by the local authority after such commutation. (*Toronto Street Railway Co. v. Toronto Corporation*, [1893] A. C. 511; 63 L. J. P. C. 10.)

A point of some interest in view of the very general substitution of electric for animal power on tramways was decided in *Manchester Carriage and Tramway Co. v. Manchester Corporation* (1902), 87 L. T. 504; 67 J. P. 14; compromised on appeal, 19 T. L. R. 439. The company worked as one system and undertaking tramways situate in the districts of the corporation and other local authorities, the greater part of which belonged to them, but some of which were leased by them from the corporation. The corporation and the other local authorities gave notice of compulsory purchase of

that part of the tramways which still belonged to the company. It was held that they were bound to purchase all the lands, buildings, works, materials and plant of the company, whether they were used for the purpose of the lines to be purchased or for the purpose of the leased lines or both, and although they would be to some extent useless to the purchasers in view of the intended electrification of the tramway system.

Sect. 43.

There are two cases in which the effect of private Acts on this section is dealt with.

In *In re Southampton Tramways Co. and Southampton Corporation* (1899), 81 L. T. 652; 63 J. P. 788, affirming 80 L. T. 236, the Act authorising the tramways (Southampton Street Tramways Act, 1877 (40 & 41 Vict. c. cxxi.)) incorporated this section, but further provided (sect. 48) that the promoters should not oppose any application made by the local authority to Parliament after eleven years from the completion of any part of the tramways within their district, but before twenty-one years from the passing of the Act, for power to purchase such tramways, and that such purchase should be by agreement or arbitration under the Lands Clauses Consolidation Act. The corporation applied for and obtained such power, and the enabling Act (Southampton Corporation Tramways Act, 1897 (60 & 61 Vict. c. cxxvi.)) defined (sect. 2) "the undertaking" as "the undertaking, works, lands, easements, plant, fixed and movable, stock-in-trade, buildings, equipments, rights, powers, privileges and authorities of the company, including the right to demand and take and recover tolls, rents and charges." It also provided (sect. 3) that the purchase should be completed at a date which was within twenty-one years from the passing of the original Act, on terms to be settled by agreement or arbitration under the Lands Clauses Consolidation Act. It was held that, under these provisions, the umpire ought to treat the undertaking of the company as an undertaking which was still subject to the contingency of compulsory purchase under the present section, and not as one which the company enjoyed free from any obligation to part therewith otherwise than under the terms of the last-mentioned Act. A clause is sometimes found embodying the principle of this decision; for instance, "in determining the amount of the consideration regard shall be had to the rights of the local authority under sect. 43 of the Tramways Act, 1870." (See Tramways Orders Confirmation (No. 3) (Dudley and Wolverhampton) Act, 1899 (62 & 63 Vict. c. cclxxiv.).)

In *Wallasey United Tramways and Omnibus Co. v. Wallasey Urban District Council* (1899), "Times" Newspaper, Nov. 17 (C. A.); (1900), 18 T. L. R. 152 (H. L.), the private Act (Wallasey Tramways Act, 1878 (41 & 42 Vict. c. ccxxxviii.)) incorporated the present section, except where expressly varied by the Act, and (sect. 37) empowered the local authority to purchase the tramways at any

Sect. 43. time within fifteen years of the passing of the Act, on the terms specified in the present section. The local authority did not exercise this power, but in 1899 gave the company notice, under the present section, requiring them to sell so much of the tramways as were within their district.

It was held that there was nothing inconsistent between the private Act and the present section, and nothing in the former to exclude the operation of the latter; that a public Act is only overridden or varied by a private Act by clear and express enactment or clear implication; and that therefore the local authority had power to purchase under the present section.

But where, as is sometimes the case (*e.g.*, at Swansea), the private Act postponed the time of purchase to a period later than that provided in the general Act, the general Act would no doubt be overridden to that extent. Where it was provided in a Provisional Order authorising a system of tramways both within and without a borough that, if at any time thereafter any tramways were constructed or purchased within the borough by the corporation, the corporation and the promoters were to grant to each other and their respective assignees and lessees running powers over their respective tramways, and the corporation had purchased that part of such tramways which lay within the borough, it was held that the above provision only applied to the purchase by the corporation of tramways other than those authorised by the above-mentioned Order, and that they were not obliged to grant the promoters' assignees running powers over the tramways so purchased by them, as above mentioned. (*Wolverhampton Corporation v. British Electric Traction Co., Ltd.* (1900), "Times" Newspaper, Nov. 17, Nov. 30.)

A resolution passed by a local authority to purchase under this section was held to be a ground for giving them a *locus standi* against a Bill to confer on a tramway company further powers for raising additional capital and other purposes. (*Edinburgh Street Tramways Bill* (1892), R. & S. 184.) But the fact that the terms of purchase might be affected if the Bill became law was not considered a ground for a *locus standi* in *Edinburgh Corporation Tramways Bill* (1893), R. & S. 254, and *Burnley Corporation (Tramways, &c.) Bill* (1898), 1 S. & A. 235. A tramway company, however, has a *locus standi* against a Bill which advances the time fixed for purchase by this section. (*Glasgow Corporation Tramways Bill* (1899), 1 S. & A. 318.)

Where a town council had arranged with the promoters of tramways during the progress of the Bill that they would pay the expenses of the Bill, if they resolved to purchase the tramways in accordance with the powers which the Bill conferred upon them, it was held that those expenses might be paid out of the surplus of the borough fund, since the arrangement was for the public benefit

of the inhabitants and the improvement of the borough within the meaning of Municipal Corporation Act, 1835 (5 & 6 Will. 4, c. 76), s. 92 (now Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 143). (*R. v. Liverpool Corporation* (1873), 28 L. T. 500; 21 W. R. 674; 37 J. P. 773.)

Sect. 43.

With the provisions as to the appointment of a referee compare sect. 33. Save that the reference is to the Board of Trade's referee, and not to an ordinary arbitrator or two arbitrators and an umpire, the proceedings are conducted like an ordinary arbitration. The expenses will, except under very special circumstances, be borne by the purchasing authority.

There is nothing in this section, however, to authorise the local authority to take possession before the purchase-money has been finally ascertained and paid. Thus a local authority were restrained from so doing while the amount of compensation to be paid by them was still under appeal. (*Manchester Carriage and Tramways Co. v. Manchester Corporation* (1902), 87 L. T. 678; settled on appeal (1903).)

Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12, provides as follows: "Where after the passing of this Act [*i.e.*, after May 30, 1895], by virtue of any Act whether passed before or after this Act, either—(a) any property is vested by way of sale; or (b) any person is authorised to purchase property; such person shall within three months after the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's printer of Acts of Parliament or some instrument relating to the vesting in the first case, and an instrument of conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production, the duty with interest thereon at the rate of five per cent. per annum from the passing of the Act, date of vesting, or completion of purchase, as the case may be, shall be a debt to Her Majesty from such person."

It has been held in *Attorney-General v. Eastbourne Corporation*, [1901] 2 K. B. 773; 70 L. J. K. B. 1046; [1902] 1 K. B. 403; 71 L. J. K. B. 181 (C. A.), that where personal property as well as realty is purchased under statutory authority (as is practically certain to be the case in a statutory purchase of a tramway system), a conveyance must be produced of the whole under the above section, and *ad valorem* duty paid in respect of the whole, and not only in respect of the realty.

A usual clause (see *post*, p. 443) provides that mortgages of the undertaking shall comprise the purchase-money arising from a sale under the present section, and shall not be a charge on the undertaking when it has been so purchased. If there is no such clause,

Sect. 43.

intending lenders, especially where there are several undertakings belonging to one set of promoters, should see that they have what will prove to be a proper security in the event of purchase by a local authority of one, several or all of the promoters' undertakings, though they would presumably have a charge on the proceeds of sale of the property comprised in their security even in the absence of a special provision. (*Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36, 54; 64 L. J. Ch. 481, 485 (C. A.)) Subject to any question of mortgages, may the promoters divide the sum obtained by the sale of a portion of their undertaking as profits? It seems that they may, under two conditions:—(i.) They must keep their capital intact, that is to say, they may only divide the excess of the purchase price over the amount expended on the property sold (*Lubbock v. British Bank of South America, Ltd.*, [1892] 2 Ch. 198; 61 L. J. Ch. 498; *Verner v. General and Commercial Investment Trust*, [1894] 2 Ch. 239; 63 L. J. Ch. 456 (C. A.)); unless they are a company, one of whose authorised objects was to buy and sell tramways. That it is the duty of promoters to set apart a sum for maintaining their tramway before paying a dividend is shown by *Dent v. London Tramways Co., Ltd.* (1880), 16 Ch. D. 344; 50 L. J. Ch. 190; and *Davison v. Gillies* (1879), 16 Ch. D. 347n; 50 L. J. Ch. 192n; see also *Walker v. London Tramways Co., Ltd.* (1879), 23 So. J. 680. (ii.) It would seem that it will not be enough that they should regard the state of the capital account of the portion sold alone, but must consider the position of all their system as a whole, except where the portion sold may be regarded as having quite a separate financial existence. (*Foster v. New Trinidad Lake Asphalt Co., Ltd.*, [1901] 1 Ch. 208; 70 L. J. Ch. 123.)

Reference may perhaps be made here to *Cox v. Edinburgh Tramways Co.* (1898), 6 S. L. T. 86. The company proposed to substitute cable haulage for horse haulage, thereby depreciating the value of their horses. A shareholder sought to interdict them from declaring a dividend till such depreciation was made up. The Court held that the matter was within the directors' discretion, and that, if they were satisfied that the substitution would benefit the company on the whole, they were entitled to include the loss on the horses as part of the cost of the substitution.

With the purchase provisions of this section generally compare Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 27, where the terms of purchase were very similar indeed to those of the present section. These are now replaced by Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 2, which, besides postponing the time for purchase, provides that regard is to be had to the fact that the undertakers' property is in such a position as to be ready for immediate working. Neither section, however, allows any addition for compulsory purchase or goodwill or profits, which may or might have been made or be made, or any similar considerations.

Now Provisional Orders often contain a clause postponing the time for purchase and providing that the price shall be the fair market value of the undertaking as a going concern, but without any allowance for compulsory purchase. (See the model clause for the tramway type of light railway, *post*, p. 624; see also, in particular, note (k) to sect. 11 of Light Railways Act, 1896.) Promoters may also be protected from being obliged to sell part of their system (see clauses, *post*, pp. 623, 624). Whether the Board of Trade will assent to the insertion of such clauses must depend on the particular circumstances, such as the amount to be expended, the probable return, the position of the promoters, and the public necessity for the line.

(r) Such notice, it is submitted, should be a specific notice of a "special meeting" (compare Sched. A., Part III.), especially where the special meeting is, as it often is, to be held at the same time as an ordinary meeting.

(s) By Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), s. 11, the management and maintenance of highways and bridges in each county vested in and became incumbent on the county road trustees (described in sect. 12) and the burgh local authorities (defined in sect. 3), and by sect. 32 all the road trusts of every kind in each county were consolidated into one general trust. Sects. 4 and 5 provide for the cesser of local road Acts on June 1, 1883, and the adoption of the Act. By Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 11, the powers and duties of the county road trustees are to be transferred to the county councils on and after the appointed day, and by sect. 16 on and after the appointed day all local Acts relating to highways in counties where the 1878 Act has not taken effect are repealed, and the 1878 Act is to have effect in every county subject to the substitution of the county councils for the county road trustees. (See also Roads and Streets in Police Burghs (Scotland) Act, 1891 (54 & 55 Vict. c. 32), as to the management of highways in police burghs.) Thus the road trustees in Scotland have vanished, and this portion of the present section appears to be no longer of force. It seems to be ridiculous to make these special provisions apply to county councils and burgh local authorities in cases in which they are successors of the road trustees.

(t) For the provisions of the Act as to borrowing by a local authority for the purpose of obtaining a Provisional Order, see sect. 20 and the notes thereto. In the case of a promotion by a local authority, the limits of the local rate are extended by the Provisional Order which authorises the tramway; here, of course, there has to be a fresh Provisional Order for the purpose.

(u) The confirmation of Provisional Orders is provided for in sect. 14.

Sect 43. (x) Similarly two or more local authorities may jointly promote a tramway (sect. 17), or a light railway (Light Railways Act, 1896, sect. 2 (c), *post*, p. 453).

Power of sale. **44.** Where any tramway in any district (*y*) has been opened for traffic (*z*) for a period of six months the promoters (*a*) may, with the consent of the Board of Trade (*b*), sell their undertaking (*c*) to any person, persons, corporation, or company, or to the local authority (*y*) of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking (*c*) sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold (*d*), in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act (*e*), and in reference to the same they shall be deemed to be the promoters.

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting (*f*) such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorised.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section (*g*).

(y) Defined in sect. 3.

(z) See sect. 25 and note (m) thereto. "Traffic" here must be equivalent to "public traffic."

(a) See sects. 4 and 24.

(b) See note (n) to sect. 43. It is even more necessary here that the consent of the Board of Trade should be obtained before the sale, because this section, unlike sect. 43, is not limited to a purchase by the local authority, and is an exception to the general principle that statutory rights cannot be assigned. (See note (g) below.) Hence it is most necessary that the Board of Trade should have full control over the transaction. Where the Board has not been assured that the letter of this section has been fulfilled, it has refused its consent (*Metropolitan Street Tramways Case*), and doubtless would always do so in a similar case. If that occurs, it remains open to the parties to obtain an Act to authorise the sale, as was done in the case alluded to.

(c) See note (o) to sect. 43. The principle of *North Metropolitan Tramways Co. v. London County Council* there mentioned would apply *a fortiori* to sales of separate undertakings under this section.

(d) Under this section, as under sect. 43, it will be observed that the powers and liabilities pass by virtue of the section and not by virtue of the conveyance or act of the promoters. Hence, *semble*, they need not be included in the conveyance, and the purchase price named in the conveyance need only be so much as covers the things necessary to be conveyed. Hence the parties may escape paying *ad valorem* duty on that part of the price attributable to the purchase of the powers, in spite of *Attorney-General v. Eastbourne Corporation*, [1902] 1 K. B. 403; 71 L. J. K. B. 181 (C. A.), for which case see *ante*, p. 187.

(e) "Special Act" includes a Provisional Order which incorporates Parts II. and III. of this Act, by sect. 23.

(f) See note (l) to sect. 43.

(g) Apart from compulsory purchase and assignment of an undertaking by way of security, this section provides the only means by which promoters can transfer their undertaking and powers. There is no limitation as to terms in this section (so Lord Watson in the *Edinburgh Case* cited below), except, it is suggested, such conditions, if any, as the Board of Trade might impose, but any sale under this section (other than a sale to the local authority) is subject to the overriding right of the local authority under sect. 43. That the promoters cannot transfer their powers except by virtue of and subject to the provisions of the statute (if they have no other statutory authority to do so) is clearly recognised in *Edinburgh Street Tramways Co. v. Lord Provost and Magistrates of Edinburgh*, [1894] A. C. 456; 21 R. (H. L.) 78; 63 L. J. Q. B. 769; by Lord Herschell, L. C., at L. R., pp. 463—464; R. (H. L.), p. 80; L. J., pp. 771—772; Lord Watson at L. R., p. 472; R. (H. L.), p. 85;

Sect. 44. L. J., p. 775; and Lord Shand at L. R., p. 487; R. (H. L.), p. 94; L. J., p. 782. This is in accordance with the well-settled principle that persons, to whom statutory powers are granted, must exercise them themselves, and may not delegate them either directly (*Beman v. Rufford* (1851), 1 Sim. (N.S.) 550; 20 L. J. Ch. 537; *Gardner v. London, Chatham and Dover Railway Co.* (1867), L. R. 2 Ch. 201, 212; 36 L. J. Ch. 323, 327, per Cairns, L. J.), or in any way at all, whether temporarily or permanently, whether by lease (*Attorney-General v. Great Eastern Railway Co.* (1880), 5 A. C. 473, 484; 49 L. J. Ch. 545, 550), or by an arrangement which practically amounts to a lease (*Winch v. Birkenhead, Lancashire and Cheshire Junction Railway Co.* (1852), 5 De G. & Sm. 562), or by any other method intended to evade the illegality of such delegation. (*Great Northern Railway Co. v. Eastern Counties Railway Co.* (1851), 9 Hare, 306, 311; 21 L. J. Ch. 837, 840; *London, Brighton and South Coast Railway Co. v. London and South Western Railway Co.* (1859), 4 De G. & J. 362, 388; 28 L. J. Ch. 521, 527.) It seems clear, then, that any attempt by promoters to transfer their powers, whether before or after the construction of the tramways, except under the provisions of this statute or any private Act, must be ineffectual. Lord Herschell observes, in *Edinburgh Street Tramways Co. v. Lord Provost and Magistrates of Edinburgh*: "A conveyance by the promoters of their tramways, or even of their undertaking, would not carry with it the right to the statutory monopoly conferred upon the promoters" by sect. 34. Anyone who worked tramways by virtue of such a conveyance would be liable to indictment for nuisance, if complaint were made. No doubt, however, many such transfers or delegations have taken place and have never been challenged. Compare the transfer of powers before construction, which was disclosed in *In re Pontypridd and Rhondda Valleys Tramways Co., Ltd.* (1889), 58 L. J. Ch. 536. In most cases it would be no one's interest or concern to challenge them. The reason of such transfers is generally that under the circumstances compliance with the requirements of the present section with regard to time is impossible; otherwise in most cases it would be easy and natural to apply for and obtain the consent of the Board of Trade.

Kaye v. Croydon Tramways Co., [1898] 1 Ch. 358; 67 L. J. Ch. 222, was a case where an agreement for sale, which included some unusual provisions for the payment of compensation to the directors and secretary of the selling company, was not allowed to be carried into effect, not on its merits but on the ground that a meeting of the shareholders of the selling company, which was to consider the agreement, had not been duly convened.

The sale of undertakings in a winding-up has been remarked upon in the note on winding-up to sect. 42.

There is no reason why promoters should not assign their undertakings by way of mortgage, whether they have special power to

do so (as provided by the model clause, *post*, p. 443) or not. But in accordance with the general principles enumerated above, it is now settled that the mortgagees have no right to the appointment of a manager for or a sale of the undertaking mortgaged. (*Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36; 64 L. J. Ch. 481 (C. A.).) It is pointed out in that case (*ad fin.*) that, though in the event of a sale under the present section the proceeds of sale would form part of the debenture holders' security, it does not follow that the power of sale conferred upon the promoters by the present section can be exercised by the debenture holders or by the Court; and that the promoters cannot transfer the power of sale given them by this section to their debenture holders. This point is further discussed in the note on winding-up to sect. 42.

Sect. 44.

With the present section generally compare the sections providing for the voluntary purchase of water and gas works respectively by local authorities, Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 63 and 162.

Tolls.

45. The promoters (*h*) or lessees (*i*) of a tramway Tolls, &c. authorised by special Act (*k*) may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified (*l*). A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways (*m*).

(*h*) See sects. 4 and 24.

(*i*) Defined in sect. 19.

(*k*) See sect. 23.

(*l*) Sect. 10 provides that every Provisional Order shall specify the tolls and charges to be taken by the promoters, and the regulations relating thereto. See sect. 10 and the notes thereto. This section is somewhat otiose. If the tolls were not provided for by the Act or Order, the promoters could not take them under this section; if they were, the promoters could take them without this section.

Compare Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 86, and sect. 3, which defines "tolls." "Toll" is said, in *Great Northern Railway Co. v. South Yorkshire Railway Co.* (1854), 9 Ex. 642, 644; 23 L. J. Ex. 186, 188, to be "a payment the consideration of which is the passage of passengers, carriages or goods."

Sect. 45.

It has been laid down that a statute imposing a toll must be considered as a bargain between the promoters and the public, and that where there is any ambiguity it must be construed against the promoters and in favour of the public. (*Stourbridge Canal Co. v. Wheeley* (1831), 2 B. & Ad. 792.) This is because such statutes, like taxing statutes, impose a burden on the subject. (*Stockton and Darlington Railway Co. v. Barrett* (1844), 11 Cl. & F. (8 E. R.) 590, 607, per Lord Brougham.) But it was pointed out by Lord Cairns, L. C., in *Pryce v. Monmouthshire Canal and Railway Companies* (1879), 4 A. C. 197, 202; 49 L. J. Ex. 130, 134, that the analogy was not exact between taxing statutes and statutes which merely moderated and limited a right to payment for services rendered, and it is probably right to say that statutes imposing tolls must be fairly construed like any other statutes. The language of such statutes is to be construed according to its ordinary meaning and use. (*Laird v. Clyde Navigation Trustees* (1879), 6 R. 756, 785; per Inglis, L. P.)

Where a tramway company's Act provided that tolls should be paid to such persons and at such places upon or near the tramways and in such manner and on such regulations as the company should by notice appoint (see the model clause, *post*, p. 441), and a duly-made by-law provided that every passenger should pay upon demand the fare legally demandable for the journey, it was held that the by-law was reasonable, that a passenger's fare was legally demandable at any point of his journey, and that a passenger, who had refused to pay till he had come to the end of his journey, had broken the by-law. (*Egginton v. Pearl* (1875), 33 L. T. (N. S.) 428; 49 J. P. 56.) See further note (z) to sect. 46 (as to by-laws).

Edinburgh Street Tramways Co. v. Torbain (1877), 3 A. C. 58; 4 R. (H. L.) 87, turned on the effect of a later Act on the Act which authorised the company's tramways. By an agreement scheduled to the former certain fares were fixed. By a subsequent Act, which gave them power to substitute omnibuses for tramways on portions of their authorised system, it was provided that the agreement aforesaid should only be affected by express provision of the Act, and that the company might charge a higher fare than that authorised by the original Act for "first-class passengers on" the omnibus "routes and any tramway routes worked in connection therewith." It was held, very naturally, that these words only referred to passengers whose journey required the use of both omnibus and tramway, and that they did not authorise the company to raise fares above the limits fixed by the original agreement in respect of passengers whose journey was entirely on the tramway.

(m) In *Gregson v. Potter* (1879), 5 Ex. D. 142; 48 L. J. M. C. 86, decided on the words "rates for the time being authorised to

be taken," it was held that the actual tolls in force for the time being, and not the maximum tolls authorised by the Act, which governed the matter, must be painted up. In the present section the words "for the time being" do not occur. *Quære* whether under the present section it is not enough to put up and keep unaltered the maximum tolls authorised by the Order or Act, even though the tolls actually charged by the promoters are less than the maximum, and vary from time to time.

Sect. 45.

Promoters do not, in many cases, exhibit their tolls on the outside of their carriages. There is no reason why proceedings should not be taken against them to compel them to do so. The kind of list and the manner of exhibiting it is not prescribed; it is enough if it is exhibited in a conspicuous place both inside and outside. Contrast London Hackney Carriages Act (6 & 7 Vict. c. 86), s. 7, whereby in metropolitan stage carriages the table of fares has to be painted in a conspicuous manner on the inside of the vehicle, but need not be exhibited outside (see also *post*, p. 206), and the model clause 63 for light railways (*post*, p. 618), which is to the same effect.

Byelaws.

46. Subject to the provisions of the special Act (*n*) authorizing any tramway and this Act,

Byelaws
by local
authority.

The local authority (*o*) of any district (*o*) in which the same is laid down may, from time to time, make regulations as to the following matters:

The rate of speed to be observed in travelling upon the tramway (*p*):

The distances at which carriages (*q*) using the tramway shall be allowed to follow one after the other:

The stopping of carriages using the tramway:

The traffic on the road in which the tramway is laid (*r*):

The promoters (*s*) of any tramway and their lessees (*t*) may from time to time make regulations,—

Promoters
may make
certain
regulations.

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them:

For regulating the travelling in or upon any carriage belonging to them (*u*).

Sect. 46. And for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make byelaws for all or any of the aforesaid purposes, and from time to time repeal or alter such byelaws, and make new byelaws, provided that such byelaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect (*x*):

Notice of the making of any byelaw under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of the Schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such byelaw shall be disallowed by the Board of Trade (*y*).

No such byelaws shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such byelaw shall have been laid before the Board, and a true copy of every such proposed byelaw shall, not less than two calendar months before such byelaw shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters (*z*).

(*n*) See sect. 23.

(*o*) Defined in sect. 3.

(*p*) The rate of speed authorised by these by-laws is not to exceed that which is permitted by the Board of Trade's Regulations. (See model clause 23, *post*, p. 434.) This Act, and a by-law regulating the rate of speed, with penalties for breach, made under this section, or the Board of Trade's Regulations limiting the rate of speed on tramways and light railways (*post*, pp. 354, 365), will not, it is submitted, preclude proceedings being taken against an offender for furious driving to the danger of life and limb under Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 78. That section applies to "any person . . . driving any sort of carriage." Tram-cars are called carriages in sect. 34 (see also note (*h*) to that section).

In *Taylor v. Goodwin* (1879), 4 Q. B. D. 228; 48 L. J. M. C. 104, Lush, J., says that "carriage" (sect. 78 of Highways Act, 1835) "will include any vehicle which might be propelled at such a speed as to be dangerous"; and in *Cannan v. Earl of Abingdon*, [1900] 2 Q. B. 66; 69 L. J. Q. B. 517, "carriage" in that section was defined as "any mechanical contrivance which carries weight over the ground in such a way that the foot of man does not support it." But see now *Simpson v. Teignmouth and Shaldon Bridge Co.*, [1903] 1 K. B. 405; 72 L. J. K. B. 204 (C. A.); and *Smith v. Kynnersley*, [1903] 1 K. B. 788; 72 L. J. K. B. 357 (C. A.). Driving, too, will apply to the management of a tramcar, whether it be propelled by mechanical or animal power. (See Mellor, J., in *Taylor v. Goodwin*, *ib. sup.*) But it may be observed that, though tramcars propelled by mechanical power come within sect. 78 of Highways Act, 1835, for the reasons already given, they are not within the Locomotives Acts if the tramway is built under statutory authority embodying the special tramways code (*Bell v. Stockton, &c. Tramway Co.* (1887), 51 J. P. 804), though if it has been built without such statutory authority, they might be. (*London and South Western Railway Co. v. Myers* (1881), 45 J. P. 731.) If they were within the Locomotives Acts they would be subject to the Highway Acts. (See Locomotives Act, 1861 (24 & 25 Vict. c. 70), s. 12; Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 38; and Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1.)

Since, then, tramcars fall within sect. 78 of Highways Act, 1835, the existence of by-laws or regulations regulating speed and imposing penalties does not abolish prosecutions under the section. (*Wandsworth District Board of Works v. Pretty*, [1899] 1 Q. B. 1; 68 L. J. Q. B. 193; *Davies v. Harvey* (1874), L. R. 9 Q. B. 433; 43 L. J. M. C. 121.) But it will produce two modifications: (i.) The by-laws and regulations and sect. 78 of Highway Act, 1835, must be read together (*London County Council v. Wandsworth and Putney Gas Co.* (1900), 82 L. T. 562; *Uckfield Rural District Council v. Crowborough District Water Co.*, [1899] 2 Q. B. 664; 68 L. J. Q. B. 1009), so that a driver who complies with the speed limits set by the by-laws and regulations ought not to be convicted of furious driving (see *Pilkington v. Cooke* (1847), 16 M. & W. 615; 17 L. J. Ex. 141; *Mount v. Taylor* (1868), L. R. 3 C. P. 645, 654; 37 L. J. C. P. 325, 330). (ii.) If a driver has been convicted or acquitted, either under by-laws and regulations or under sect. 78 of Highway Act, 1835, he may plead autrefois convict or acquit, if proceeded against again on the same facts under sect. 78 or under by-laws and regulations, as the case may be. Compare *Wemyss v. Hopkins* (1875), L. R. 10 Q. B. 378; 44 L. J. M. C. 101, where a conviction under sect. 78 was held to be a bar to a conviction for assault under Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 42.

Sect. 46.

(q) See sect. 34.

(r) A model form of such by-laws is printed *post*, p. 375. For a clause very much extending the scope of such by-laws see London United Tramways Act, 1900 (63 & 64 Vict. c. cclxxi.), s. 35 (37).

(s) See sects. 4 and 24.

(t) Defined in sect. 19.

(u) This provision does not prevent the local authority making by-laws under sect. 48, which would come within the words of this provision, without the assent of the promoters or lessees. (*Smith v. Butler* (1885), 6 Q. B. D. 349.)

A model form of such by-laws will be found *post*, p. 377.

(x) See note (z).

(y) The Board of Trade has power to disallow only, and not to make, by-laws under this section. It has, however, issued model by-laws (*post*, pp. 375, 377), which local authorities, promoters and lessees may adopt if they wish. It has also power to make regulations and by-laws with regard to the use of mechanical power. See the model clauses (*post*, pp. 432, 433), and forms of such regulations and by-laws (*post*, pp. 352 *sqq.*).

(z) With the provisions of this section compare generally Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 108, 109, and the model clauses, *post*, p. 617: "A by-law is a local law, and may be supplementary to the general law; it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful, which the general law makes unlawful; or that unlawful which the general law makes lawful." "By-laws must not only be reasonable, but must not be repugnant to the general law." (*White v. Morley*, [1899] 2 Q. B. 34, 39; 68 L. J. Q. B. 702, 703; approved in *Thomas v. Sutters*, [1900] 1 Ch. 10; 69 L. J. Ch. 27 (C. A.).)

The present section contemplates two sets of by-laws, those to be made by local authorities and those to be made by promoters respectively. It now seems to be settled that in criticising the reasonableness of by-laws regard must be had to the body or persons who made them. This view is laid down by Lord Russell of Killowen, C. J., in *Kruse v. Johnson*, [1898] 2 Q. B. 91, 99, 100; 67 L. J. Ch. 782, 785—6: "The great majority of the cases in which the question of by-laws has been discussed are not cases of by-laws of bodies of a public representative character entrusted by Parliament with a delegated authority, but are for the most part cases of railway companies, dock companies, or other like companies, which carry on their business for their own profit, although incidentally for the advantage of the public. In this class of case it is right that the Courts should jealously watch the exercise of these powers, and guard against their unnecessary or unreasonable exercise to the public disadvantage. But, when the Court is called upon to consider the by-laws of public representative bodies

clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which I have mentioned, I think the consideration of such by-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered." He grants that it might be necessary in some cases to condemn even such by-laws as unreasonable, "if, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men. . . . But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there." The local authorities' by-laws under this section are not subject to such stringent safeguards as in *Kruse v. Johnson*, or in *Slattery v. Naylor* (1888), 13 A. C. 446; 57 L. J. P. C. 73—a very similar case; but the principle would seem to apply almost, if not quite, equally to them. But in a proper case, as Lord Russell pointed out, the reasonableness of a local authority's by-law will be considered, and he himself decided that such a by-law was unreasonable in *Alty v. Farrell*, [1896] 1 Q. B. 636; 65 L. J. M. C. 115. In the case, however, of by-laws made by promoters, the Court will not consider itself limited in any way in inquiring into the reasonableness thereof.

By-laws of either class will be invalid, whether reasonable or not, (i.) if they are repugnant to the statute under which they are made or to the general law (this is specially provided for in the present section); (ii.) if they are not made in strict accordance with the statute which confers the power of making them—they may have been made in relation to subjects as to which the statute gives no power to make them, or the procedure provided for their making may not have been properly observed. (*Brown v. Holyhead Local Board* (1862), 1 H. & C. 601; 32 L. J. Ex. 25; *Kennaird v. Cory*, [1898] 2 Q. B. 578; 67 L. J. Q. B. 809.)

Is a by-law, passed under a power granted for regulating something, invalid if it absolutely prohibits that thing? In *Toronto Corporation v. Virgo*, [1896] A. C. 88; 65 L. J. P. C. 4, it was said: "Their Lordships think there is a marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regu-

Sect. 46.

lated or governed." Thus in that case a prohibitive by-law was held to be invalid; so too in *Dick v. Badart* (1883), 10 Q. B. D. 387, and *Pidler v. Berry* (1888), 59 L. T. 230. The real criterion seems to be, whether or not the prohibition is such that it can be regarded as part of and necessary to the regulation and governance; if it can, it is valid. Thus power to regulate burials includes power to make a by-law which has the effect of prohibiting burials altogether in a particular cemetery. (*Slattery v. Naylor* (1888), 13 A. C. 446; 57 L. J. P. C. 73.) But a power to make by-laws regulating traffic, as in the present section, would not include a power to prohibit traffic on Sundays or any other particular day, unless there are special and reasonable grounds for doing so in a particular case. (*Calder and Hebble Navigation Co. v. Pilling* (1845), 14 M. & W. 76; 14 L. J. Ex. 223.) In some cases it has been provided (*e.g.*, in Edinburgh Tramways Act, 1871 (34 & 35 Vict. c. lxxxix.), s. 43) that the promoters may not ply carriages for hire upon their tramways on any Sunday without the consent of the local authorities.

If a by-law is only bad in part and is severable, the remaining part may be good. (*Clark v. Denton* (1830), 1 B. & Ad. 92, 95, per Bayley, J.; *Strickland v. Hayes*, [1896] 1 Q. B. 290; 65 L. J. M. C. 55 (C. A.).) This view must be considered preferable at the present time to the opposite opinion cited from Comyns' Digest in *Saunders v. South Eastern Railway Co.* (1880), 5 Q. B. D. 456, 463; 49 L. J. Q. B. 761, 765; in that case the whole by-law was affected with unreasonableness, because it was the penalty which was unreasonable.

A by-law which purports to create an offence and to impose fine or imprisonment ought to be clear, precise and free from doubt as to its meaning and intention. (*Foster v. Moore* (1879), 4 L. R. I. 670; *Nash v. Finlay* (1901), 85 L. T. 682; 66 J. P. 183.) A by-law may be enforced by pecuniary penalty only, not by imprisonment, unless a statute expressly authorises the infliction of the latter (*Hall v. Nixon* (1875), L. R. 10 Q. B. 152, 159; 44 L. J. M. C. 51), and the penalty must not be left uncertain, though it is enough that a maximum be prescribed, and the penalty be left to be assessed subject to the maximum. (*Piper v. Chappell* (1845), 14 M. & W. 624 (Parke, B.).) Neither must the by-law reserve to the body making it the power to say whether an offence has or has not been committed, and, if it has, whether there was reasonable excuse for it. (*Stationers' Company v. Salisbury* (1693), Comb. 221 (Holt, C. J.); and see *Parker v. Bournemouth Corporation* (1902), 86 L. T. 449; 66 J. P. 440.)

Where a by-law is made for the protection of those who issue it, they cannot avail themselves of it, unless they themselves keep strictly within its provisions. (*Jennings v. Great Northern Railway Co.* (1865), L. R. 1 Q. B. 7; 35 L. J. Q. B. 15.) A master has been held liable for the breach of a by-law by his servant within

the scope of that servant's employment, though the act which constituted the breach was done against the orders of the master. (*Collman v. Mills*, [1897] 1 Q. B. 396; 66 L. J. Q. B. 170.)

Sect. 46.

So a tramway company has been held responsible for the neglect of their engine driver, who failed to comply with the regulations of the Board of Trade with regard to lamps on tramway engines. (*St. Helen's District Tramways Co. v. Wood* (1891), 60 L. J. M. C. 141.)

It would be otherwise if the act in question constituted a crime. (*Chisholm v. Doulton* (1889), 22 Q. B. D. 736; 58 L. J. M. C. 133.)

Whether a by-law is reasonable or not is a question of fact depending for its answer on the particular circumstances of each case. The following by-laws of tramway companies have been held to be reasonable :—

“Each passenger shall, upon demand, pay to the conductor, or other duly authorised officer of the company, the fare legally demandable for the journey.” (*Egginton v. Pearl* (1875), 33 L. T. (N. S.) 428.)

“Passengers wishing to travel between Stockbridge and Newton, either way, will require to have the tickets issued by conductors changed at the office, 53 North Bridge.” The journey in question was performed partly by omnibus and partly by tramway, and the office mentioned was at the point where passengers changed from one to the other. (*Apthorpe v. Edinburgh Street Tramways Co.* (1882), 10 R. 344.) This is an extraordinary decision under the circumstances. (See further as to the same case in the notes to sect. 52, *post*, p. 218.)

“Each passenger shall show his ticket (if any), when required so to do, to the conductor or any duly authorised servant of the company, and shall also, when required so to do, either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.” Under this by-law a conviction was held to be valid, where a passenger refused to deliver up his ticket or to pay, on the ground that he had not reached the end of his journey, in spite of the fact that he had already paid once. (*Heup v. Day* (1887), 34 W. R. 627; 51 J. P. 213.)

The same by-law was also held to be not unreasonable in *Hanks v. Bridgman*, [1896] 1 Q. B. 253; 65 L. J. M. C. 41; and *Lowe v. Volp*, [1896] 1 Q. B. 256; 65 L. J. M. C. 43.

The first two of these three cases dealt with the latter part of the by-law, the last case with the former part. There was no suggestion of intention to defraud in any of the three, and Kay, L. J., pointed out that the by-law might be improper as including inadvertent breaches if it purported to be made to carry out sect. 51, but was not improper as it was made under the present section, and was intended merely to regulate the travelling upon the tramway.

In *Gentel v. Rapps*, [1902] 1 K. B. 160; 71 L. J. K. B. 105, a by-law made by promoters—“No person shall swear or use offensive

Sect. 46. or obscene language whilst in or upon any carriage, or commit any nuisance in or upon or against any carriage, or wilfully interfere with the comfort of any passenger"—was held to be good and not repugnant to the general law, although the local law of the place and Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28, required obscene language to be used "to the annoyance of the inhabitants or passengers," if it was to subject the user to a penalty. The ground of the decision was that the by-law was reasonable, as dealing with a nuisance with which the company had power to deal, and that the offence, when committed on a tramcar, was not precisely what it was when committed in the street. Doubt was thrown upon *Strickland v. Hayes*, [1896] 1 Q. B. 290; 65 L. J. M. C. 55 (C. A.), in so far as it dealt with the question of repugnancy.

See also the notes to sect. 48 for the discussion of similar questions relating to regulations made under that section, the notes to sect. 49 as to penalties, the notes to sect. 51 as to the necessity of fraudulent intent to justify a conviction for the matters therein dealt with, and under by-laws intended to carry the provisions of that section into effect, and the notes to the Board of Trade's Regulations as to steam power (*post*, pp. 352 *sqq.*), for decisions on by-laws of that nature.

The following decisions which have been given on railway companies' by-laws may usefully be referred to in addition to those cited in the notes to sect. 51. *Quære* whether a railway company has power, under Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 108, 109, to make a by-law whereby it should be compulsory for a person having no ticket or refusing to show it to leave the carriage, or a by-law whereby a person, who has taken his ticket, can be compelled to produce his ticket whenever called upon. (*Saunders v. South Eastern Railway Co.* (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761, per Cockburn, C. J.; but see *Barry v. Midland Railway Co.* (1867), 1 R. 1 C. L. 130.) Where a by-law prohibits a person from travelling without first paying his fare and obtaining a ticket, the company may remove from the carriage a person who has no ticket, although he offers to pay his fare. (*McCarthy v. Dublin, Wicklow and Wexford Railway Co.* (1870), 1 R. 5 C. L. 244—an unsatisfactory case.) A by-law, providing that a person travelling without a ticket or refusing to show or deliver up his ticket when required should pay the fare from the station whence the train originally started to the end of his journey, is unreasonable. (*Saunders v. South Eastern Railway Co.*, *ub. sup.*)

In *Ex parte National Carriage, &c. Insurance Union* (1902), "Times" Newspaper, July 9, the Court refused a rule nisi for a mandamus directed to the Corporation of Manchester to show cause why they should not make by-laws for their tramways as provided by their special Act. The applicants alleged that the absence of

by-laws had increased the number of accidents in respect of which they had had to pay claims.

Sec. 46.

There is no provision in this Act for the publication of by-laws or for their reception as evidence. In the case of by-laws made under Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 124, by companies to which that Act (by sect. 1) applies, "for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever," the production of a written or printed copy having the common seal of the company affixed is sufficient in all cases of prosecution under them. In *Motteram v. Eastern Counties Railway Co.* (1859), 7 C. B. (N. S.) 58; 29 L. J. M. C. 57, however, it was held that an examined copy of the by-laws of a railway company, made under Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 108, and certified as a true copy by the officer in charge of the original, might be received in evidence as a document of a public nature under Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 14. This case would apparently apply to by-laws made under the present section, whether by a local authority or by promoters.

By Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31, expressions used in by-laws made under a statutory power shall, unless the contrary intention appears, have the same meaning as they have in the Act conferring the power.

47. Any such byelaw may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues; but all byelaws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

Penalties
may be
imposed in
byelaws.

A by-law is unreasonable, which purports to make an offender liable to pay the fare from the place from which a train started to the end of his journey, inasmuch as it imposes varying penalties for offences of equal criminality. (*Saunders v. South Eastern Railway Co.* (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761.) Such a by-law does not create a debt recoverable in a Court of civil jurisdiction. (*London and Brighton Railway Co. v. Watson* (1879), 4 C. P. D. 118; 48 L. J. C. P. 316 (C. A.); cf. *Brown v. Great Eastern Railway Co.* (1877), 2 Q. B. D. 406; 46 L. J. M. C. 231.) *Secus*, where a passenger took a ticket to a more distant station, and alighted at a station *en route*, to which

Sect. 47. the fare was greater. In that case the difference between the fares was recoverable civilly by the company as on a contract. (*Great Northern Railway Co. v. Winder*, [1892] 2 Q. B. 595; 61 L. J. Q. B. 608.) These cases, it is submitted, would apply *mutatis mutandis* to tramways. See also *Foster v. Moore*, *Hall v. Nixon*, and *Piper v. Chappell*, cited in note (z) to sect. 46.

Power to local
authority to
license
drivers, con-
ductors, &c.

48. The local authority (*a*) shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages (*b*) using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages, and the drivers and other persons having the charge thereof, and to the standings for the same in the streets (*c*) and district (*d*) of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connexion therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority (*d*).

(*a*) Defined in sect. 3.

(*b*) See sect. 34.

(*c*) "Street" is defined in Town Police Clauses Act (10 & 11 Vict. c. 89), s. 3, as including "any road, square, court, alley, and thoroughfare, or public passage within the limits of the special Act." It has been held that, in reference to hackney carriages, a street is a place over which the public has a right of passage. (*Curtis v. Embery* (1872), L. R. 7 Ex. 369; 42 L. J. M. C. 39.)

(*d*) The licensing and regulation of hackney carriages in England generally is governed by Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), ss. 37 to 68, which are incorporated by Public Health Act, 1875, s. 171, for the purpose of regulating hackney carriages in urban districts. This last-mentioned section provides that the words "within the prescribed distance" in the incorporated provisions shall mean "within any urban district," and limits the duration of licenses to a year. Sect. 68 of Town Police Clauses Act, 1847, gives power to make by-laws, and sets of model by-laws will be

found in Mackenzie & Handford's Model By-laws, vol. i. p. 272, Sect. 48.
vol. ii. p. 87.

The above provisions only apply to urban districts. If a rural district council wishes to make by-laws on the subject, it must apply to the Local Government Board for the powers of an urban district council in the matter.

It is frequently the case that the licensing and regulation of hackney carriages is provided for by special local Acts, and put in the hands of an authority other than the ordinary local authority. For instance, Bristol Encroachment Act, 1837 (1 & 2 Vict. c. lxxxv.), ss. 31, 32, give the power to make regulations for licensing, &c., to the town council, and provide that the licences shall be signed by two justices of the peace. Hence we have the proviso in the present section preserving the powers of such authorities other than the local authority.

These local Acts are preserved by Public Health Act, 1875, ss. 340, 341, and that Act is not intended to repeal local Acts. (*Burton v. Salford Corporation* (1883), 11 Q. B. D. 286; 52 L. J. Q. B. 668; *In re Monmouth Corporation and Monmouth Overseers* (1878), 38 L. T. 612, 617.)

The result of these sections, then, coupled with the proviso to the present section, seems to be that where an authority having power to license under a local Act has become an urban sanitary authority under Public Health Act, 1875, it may license trams either under the local Act or under the provisions of Town Police Clauses Act, 1847, incorporated with Public Health Act, 1875 (see *Lea v. Facey* (1887), 19 Q. B. D. 352; 56 L. J. Q. B. 536 (C. A.)); but where the local Act gives power to another body to license or take part in licensing, then the authority of such body still remains.

In Scots burghs hackney carriages are licensed and regulated by Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), ss. 270 to 273 inclusive and Schedule V., as amended by Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49). The sections and schedule of the former Act specifically allude to tramway cars, and provide for the regulation of their condition and management and of their passengers' behaviour in very wide terms. They also provide for the authorisation of shelters for tramcar drivers, but apparently not for conductors.

In the Metropolitan Police District and the City of London and its liberties hackney carriages are still governed by a series of provisions: London Hackney Carriage Act, 1831 (1 & 2 Will. 4, c. 22), London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), London Hackney Carriages Act, 1850 (13 & 14 Vict. c. 7), London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), London Hackney Carriage (No. 2) Act, 1853 (16 & 17 Vict. c. 127), Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), and London Cab Act, 1896 (59 & 60

Sect. 48.

Vict. c. 27). They are licensed by the Commissioner of Police under the provisions of orders of the Home Secretary, made under sect. 6 of Metropolitan Public Carriage Act, 1869. These orders will be found in Archibald's Metropolitan Police Guide (ed. 3), pp. 1271—80. These orders also contain divers other regulations as to hackney carriages.

The identification of a tramcar with a "hackney carriage" in this section is somewhat remarkable, because singularly inappropriate. A tramcar much more nearly resembles a "stage carriage," and while the definition of "hackney carriage" in Town Police Clauses Act, 1847, s. 38, is unsuitable to it, that of "stage carriage" in Metropolitan Public Carriage Act, 1869, s. 4, includes it exactly, and consequently that of "hackney carriage," which there means every carriage plying for hire which is not a "stage carriage," excludes it (see also as to this note (*h*) to sect. 34).

The words of the present section, however, are explicit. But it will be observed that the present section does not make the Acts relating to hackney carriages apply to tramcars (the Acts relating to stage carriages do so apply), but merely gives the local authority or other authority, as the case may be, power to license tramcars and the persons having charge thereof, and to make and enforce rules and regulations with regard thereto just as they may do in the case of hackney carriages and the persons in charge thereof, and the standing of the same. This is further shown by Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), which extends "hackney carriage" in certain cases to include "omnibus," but expressly makes "omnibus" exclude "tramcar." The position of tramcars and those in charge of them appears, therefore, to be as follows:—

(i.) They are subject to any by-laws made by local authorities, promoters and lessees under sect. 46.

(ii.) They are subject to rules and regulations and to licenses made and granted under the present section.

(iii.) They are subject to the provisions of the various Acts relating to stage carriages, as being by their nature stage carriages (see note (*h*) to sect. 34 for a discussion of the question).

(iv.) They are governed by the provisions of this Act which relate to carriages used on tramways. These must be taken to apply in preference to other general enactments which are applicable to tramcars. Sect. 45, for instance, in prescribing a table of fares both inside and out, but not prescribing that it should be painted, differs materially from London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 7, and must be applied in preference. (See *Cousins v. Stockbridge* (1866), 30 J. P. 166.) Again, take the matter of the overcrowding of a tramcar. Proceedings may be taken in respect of this under Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), ss. 13, 15 (*Brian v. Aylward* (1902), 18 T. L. R.

371), or any other Act relating to stage carriages whether local or general, or under by-laws made by promoters or lessees under sect. 46 "for regulating the travelling in or upon any carriage belonging to them," if they deal with this particular matter, or under rules and regulations made by the proper authority under the present section (as in *Stokell v. Baldwin* (1892), 8 T. L. R. 346). It is the practice to license a tramcar to carry so many passengers inside and so many outside only. An offence has been committed against the terms of such a licence, if the number either inside or outside exceeds the number prescribed for inside or outside respectively, although the total prescribed number is not exceeded (*Black v. Neilson* (1897), 2 Adam Just. Ca. 424; 25 R. 98), and even although there is a regulation that a conductor shall not carry in his car a greater number of passengers than that specified in the licence as the maximum number of passengers. (*Stokell v. Baldwin* (1892), 8 T. L. R. 346.) Regulations as to overcrowding or other regulations made under this section may be enforced by the police or the local authority, or the promoters or lessees. Where such a regulation is made for the protection of the public (*e.g.*, a regulation as to overcrowding), a member of the public is entitled to enforce it either against the driver or conductor, if the regulations make them liable to penalties (*Badcock v. Sankey* (1890), 54 J. P. 564), or, *semble*, against the promoters or lessees (*City of Oxford Tramway Co. v. Sankey* (1890), 54 J. P. 52), or such officer or other person as any statute or regulations make liable. Passengers have also been fined for aiding and abetting conductors, under Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5 (see *In re Stevens* (1898), 62 J. P. 810). The fact that the promoters or lessees have made or might make similar regulations under sect. 46 does not prevent the proper authority from making regulations under the present section without the assent of the promoters or lessees. (*Smith v. Butler* (1885), 16 Q. B. D. 349.)

It has been held that a London tramway company was bound to obey a by-law made by a local authority, to the effect that all vehicles during a certain period should carry a lamp exhibiting a white light; and that the carrying of a coloured light was not a proper compliance therewith. The by-law was expressed not to apply to a vehicle which was by statute or rule required to carry a lamp, but no regulation had been made to that effect under Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), s. 9, or otherwise. (*Adamson v. Miller* (1900), 44 So. J. 278; 16 T. L. R. 185.)

But the Court, it seems, will consider the reasonableness of such regulations. (*Adamson v. Miller*, *ub. sup.*; cf. *Elwood v. Bullock* (1844), 6 Q. B. 383, 401; 13 L. J. Q. B. 330.) In *Toronto Corporation v. Toronto Street Railway Co.* (1888), 15 Ont. App. 30, it was held that a

Sect. 48. by-law made by the local authority that all cars within the city should have two men in charge of them was invalid as being an invasion of the domestic concerns and internal economy of the company. Several American cases therein cited were followed. But a by-law forbidding "canvassing" for passengers by persons other than the driver and conductor of an omnibus, and by them except when opposite an omnibus while it was on an omnibus stand, was held to be *intra vires* in *Rutherford v. Somerville* (1901), 4 F. (J. C.) 15.

It is provided by Public Health (Confirmation of Bye-Laws) Act, 1884 (47 & 48 Vict. c. 12), s. 3, that rules and regulations made by an urban authority under the present section shall be deemed to have required or to require the confirmation of the confirming authority (which is now the Local Government Board (sect. 2)), and not to have required or to require any other confirmation, allowance or approval. This overrides *Wallasey Tramway Co. v. Wallasey Local Board* (1883), 47 J. P. 821, where it was held that certain regulations as to overcrowding had to be confirmed by quarter sessions or a judge under Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 202.

The proper authority has discretion to refuse a licence or to postpone the grant of it. (*Ex parte Mitcham* (1864), 5 B. & S. 585; 33 L. J. Q. B. 325.) But such discretion must be properly and honestly exercised. Where the authority had made an agreement only to license certain persons, and had then cancelled it as *ultra vires*, but had in fact acted in accordance with its terms in the matter of licensing, a mandamus was directed to issue to them to hear and determine the applications for licences. (*R. v. Barry District Council* (1900), 16 T. L. R. 565.) Considerable suspicion, for instance, would arise where the licensing authority were the owners of a tramway and refused to license the cars or servants of a competing line, as in *R. v. Blackpool Corporation* (1899), 34 L. J. Newspaper, 691.

The authority are entitled to require the personal attendance of an applicant for a driver's licence, even where the manager of the company for which he drives appears and applies on his behalf. (*Banton v. Davies* (1891), 17 Cox, C. C. 469; 66 L. T. 192; 56 J. P. 294.)

If the local authority is the owner of and works a tramway, the tramcars must be licensed by the body which represents the police authority, whether it be a committee of the local authority or otherwise (see *Black v. Neilson* (1897), 2 Adam Just. Ca. 421, 429; 25 R. (J. C.) 98, 103); and it will be the duty of that body to see that the local authority obeys the police or other local regulations (*e.g.*, against loitering or overcrowding), to which the tramcars of a local authority are just as much subject as if they belonged to private promoters.

Offences.

49. If any person wilfully obstructs any person acting under the authority of any promoters (*e*) in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property (*f*) of any promoters (*e*), lessees (*g*), or licensees (*h*), he shall for every such offence be liable to a penalty not exceeding five pounds (*i*).

Penalty for obstruction of promoters in laying out tramway.

(*e*) See sects. 4 and 24.

(*f*) The expression is quite general, but possibly the rest of the section limits the word to the meaning of property used in connection with the tramways by the persons named. If this is so, the drafting is remarkably poor. Again, if this is so, how close must the connection be? Would office furniture, for instance, be included?

(*g*) Defined in sect. 19.

(*h*) See sects. 35 to 40.

(*i*) It will be observed that this section inflicts a penalty on certain offenders, but does not provide that such penalty shall be in addition to other remedies which may be enforceable against them, as sect. 27, for instance, provides. But it would appear that in most of the cases contemplated by the section the injured persons might have, in addition to the penalty, damages to the extent of the injury suffered by them.

The doctrine of *Atkinson v. Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441; 46 L. J. Ex. 775 (C. A.), that, where a statute prescribes penalties for a breach, the person injured by the breach has no right of action, whether the penalty goes into the pocket of the person injured or not (compare *Clegg, Parkinson & Co. v. Earby Gas Co.*, [1896] 1 Q. B. 592; 65 L. J. Q. B. 339), must be qualified in various respects.

(i.) It depends for its applicability in any particular case on the purview of the Legislature in its dealing with that case. (*Atkinson v. Newcastle and Gateshead Waterworks Co.*, *ub. sup.*, per Lord Cairns, L. C.; *Borough of Bathurst v. Macpherson* (1879), 4 A. C. 256; 48 L. J. P. C. 61; *Milnes v. Huddersfield Corporation* (1886), 11 A. C. 511; 56 L. J. Q. B. 1.)

(ii.) Where a statute merely prohibits a thing from being done in general, and not for the advantage of any particular person or

Sect. 49. class of persons, and affixes a penalty, an action for damages is not maintainable. (*Sterens v. Jeacocke* (1847), 11 Q. B. 731; 17 L. J. Q. B. 163; *Groves v. Lord Wimborne*, [1898] 2 Q. B. 402; 67 L. J. Q. B. 862 (C. A.).)

(iii.) Nor is an action maintainable where the harm suffered by the plaintiff was not of the kind which the statute was intended to prevent, unless the defendant has been guilty of negligence over and above his breach of his statutory duty. (*Gorris v. Scott* (1874), L. R. 9 Ex. 125; 43 L. J. Ex. 92.)

(iv.) Nor is an action maintainable where the statute creates the offence for which it enacts the penalty. (*R. v. Dickenson* (1668), 1 Wms. Saund. 134 and 135b, note (g); *Fallance v. Falle* (1884), 13 Q. B. D. 109; 53 L. J. Q. B. 459.) But in such a case the ancillary remedy by injunction may still be claimed. (*Cooper v. Whittingham* (1880), 15 Ch. D. 501; 49 L. J. Ch. 752; see *Attorney-General v. Ashborne (sic) Recreation Ground Co.*, [1903] 1 Ch. 101; 72 L. J. Ch. 67; and *Devonport Corporation v. Tozer*, [1903] 1 Ch. 759; 72 L. J. Ch. 411 (C. A.).)

(v.) But where a duty or obligation exists at common law, or otherwise independently of the statute, the remedy given by the statute is to be regarded as additional to that which is otherwise available, unless the statute shows that the Legislature did not intend this. (*Chapman v. Pickersgill* (1762), 2 Wils. K. B. 145; *Lichfield Corporation v. Simpson* (1845), 8 Q. B. 65; 15 L. J. Q. B. 78; *Great Northern Steamship Fishing Co. v. Edgehill* (1883), 11 Q. B. D. 225, 226.)

The acts for which a penalty is enacted by the present section would, in practically every case, be acts for which, apart from the section, the promoters, lessees or licensees would have a common law remedy against the person responsible for the acts. It is conceivable that certain forms of obstruction might not involve any injury, by trespass or otherwise, for which the promoters, lessees or licensees would have a common law remedy, and in such a case it is possible that the penalty imposed by this statute would be regarded as the only remedy; it is also likely that in such a case 5*l.* would be a sufficient punishment for the breach. But in every other case it is submitted that the promoters, lessees and licensees still have their ordinary remedies in addition to that provided by the present section.

The recovery of penalties is provided for by sect. 56.

Penalties for wilful injury or obstruction to tramways, &c.

50. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Sect. 50.

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway ;

Does or causes to be done any thing in such manner as to obstruct (*k*) any carriage using a tramway, or to endanger the lives of persons therein or thereon ;

Or knowingly aids or assists in the doing of any such thing ;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject (*l*)) to a penalty (*m*) not exceeding five pounds (*n*).

(*k*) Two men drove a janker cart slowly up a hill just in front of a tramcar, thereby compelling the car to travel at a walking pace, and did not turn aside when whistled to by the driver of the car. There was evidence that it would have been impossible, or at least dangerous, to have turned aside under the circumstances. On reaching level ground they at once turned aside. Their conviction was quashed, in the case of one man, because he was merely acting under the orders of the other, and in the case of the other, because there was no obstruction within the meaning of the present section. (*Hall v. Linton* (1879), 7 R. (J. C.) 2 ; 4 Coup. Just. Ca. 282.) Compare also *R. v. Hardy* (1871), L. R. 1 C. C. 278 ; 40 L. J. M. C. 62, a case on the obstruction of a railway train, but the principle of which would apply to a tramway.

In *Batting v. Bristol and Exeter Railway Co.* (1861), 3 L. T. (N. S.) 665 ; 9 W. R. 271, it was held under a private Act—the provisions of which were substantially the same as those of this part of the present section, but without the word “wilfully”—that intentional, and not mere accidental, obstruction was meant ; *a fortiori*, this would be so under the present section. *Quære* whether “does anything in such manner as to obstruct” means, as pointed out in the last-cited case in slightly different words, that there need not actually be an obstruction, so long as there is an intention to obstruct, and an act directed to carrying out such intention.

As to obstruction of a highway generally by vehicles, see *R. v. Russell* (1805), 6 East 427 ; *R. v. Cross* (1812), 3 Camp. 224 ; *Mott v. Shoolbred* (1875), L. R. 20 Eq. 22 ; 44 L. J. Ch. 380.

(*l*) These words prevent any question arising on this section of the nature of that discussed in note (*i*) to sect. 49.

(*m*) Recoverable under sect. 56.

(*n*) The corresponding provisions in the case of railways are Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 35 to 38, and

Sect. 50. Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 32 to 34.

Penalty on passengers practising frauds on the promoters.

51. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty (*o*) not exceeding forty shillings (*p*).

(*o*) Here the section creates the offence and affixes the penalty to it. See note (*i*) to sect. 49, head (*iv*.).

The penalty is recoverable under sect. 56.

The offence amounts to a misdemeanour, and would be punishable upon an indictment as such, if the statute had not provided a penalty and the mode of enforcing it. As it is, this penalty is the only punishment which can be inflicted for the offence which the section creates. Thus, an offence against this section is a criminal offence, and an action for malicious prosecution may be brought in respect of proceedings taken under it. (*Rayson v. South London Tramways Co.*, [1893] 2 Q. B. 304; 62 L. J. Q. B. 593 (C. A.).) Compare *R. v. Paget*, *infra*, p. 214. With regard to the necessity that the penalty named in by-laws intended to carry out such provisions as those of this section should not exceed or be capable of exceeding the penalty fixed by the section, see *Piper v. Chappell* (1845), 14 M. & W. 624, and *Saunders v. South Eastern Railway Co.* (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761, cited in note (*z*) to sect. 46.

(*p*) This section is very similar to Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 103, re-enacted in part and extended by Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5 (3), and repealed as to the part so re-enacted by S. L. R. Act, 1892 (55 & 56 Vict. c. 19). The substantial effect of these sections is as follows, the material difference between them and the present section being indicated by italics:—If any person (*a*) travels or attempts to travel on a railway without having *previously* paid his fare, and *with intent* to avoid payment thereof; or (*b*) having paid his fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without *previously* paying the additional fare

for the additional distance, and *with intent* to avoid payment thereof; Sect. 51.
 or (c) *having failed to pay his fare, gives, in reply to a request by an officer of a railway company, a false name or address*; or (d) knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit the carriage in which he has travelled.

It will be observed that head (c) does not appear in the Tramways Act at all. In the case of tramways, again, there is no question of paying the fare "previously" to starting on the journey; indeed, the words "travelling or having travelled" in the present section contemplate that the fare may be paid after the end of a journey. Again, instead of the words "with intent to avoid payment thereof," we find in the present section "avoids or attempts to avoid payment of his fare" and "does not pay the additional fare, or attempts to avoid payment thereof." It is submitted that the wording of these portions of the two sections amounts to the same. If you fail to pay with intent to avoid paying, you attempt to avoid paying, and anyone who attempts to avoid paying must have failed to pay with the intent not to pay. It is noticeable, too, that the marginal notes to both the tramway and the railway sections have "penalties on passengers practising frauds" on the promoters and the company respectively.

It follows, then, that the various decisions on the railway sections, by which it has been held that certain by-laws are bad which purport to carry out these sections and seek to punish breaches of them as offences, whether there is fraudulent intent or not, apply equally to by-laws made to carry out the present section. It is true that in the three tramway cases (*Heap v. Day* (1887), 34 W. R. 627; 51 J. P. 213; *Hanks v. Bridgman*, [1896] 1 Q. B. 253; 65 L. J. M. C. 41; and *Lowe v. Volp*, [1896] 1 Q. B. 256; 65 L. J. M. C. 43), the element of intent to defraud was disregarded, but the reason of this was pointed out by Kay, L. J., in the last-mentioned case—viz., that those cases deal with by-laws made under sect. 46, and we have his dictum to the effect that if the promoters made by-laws under the present section prescribing penalties for breaches which were inadvertent, such by-laws would be clearly unreasonable.

But *quære* whether this dictum is consistent with the view expressed by Cockburn, C. J., in *Saunders v. South Eastern Railway Co.* (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761, in considering a similar by-law which provided, *inter alia*, that passengers should show or deliver up their tickets whenever required. He was of opinion that such a provision could only be regarded as subsidiary to the purposes of sect. 103, and a breach of it could not be made an offence in the absence of intent to defraud.

A similar view to that of Kay, L. J., appears in relation to railways in *Dearden v. Townsend* (1865), L. R. 1 Q. B. 10; 35

Sect. 51. L. J. M. C. 50, where it was pointed out that a by-law which did not make fraudulent intent an essential ingredient of the offence was good so far as made under sects. 108, 109 of Railways Clauses Consolidation Act, 1845 (the material part of which is similar to sect. 46 of the present Act), and dealing with matters included in those sections, but void in so far as it purported to cover a matter which fell under sect. 103, the essence of breaches under that section being intent to defraud.

See also *London and Brighton Railway Co. v. Watson* (1878), 3 C. P. D. 429; 47 L. J. C. P. 634.

The other material railway cases are the following:—

A by-law covering offences under sect. 103 is void unless it makes intent to defraud an ingredient of the offence. (*Bentham v. Hoyle* (1878), 3 Q. B. D. 289; 47 L. J. M. C. 51; *Saunders v. South Eastern Railway Co.* (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761; *Dyson v. London and North Western Railway Co.* (1881), 7 Q. B. D. 32; 50 L. J. M. C. 78.) *Quære* whether a by-law, while making fraudulent intent an ingredient, can throw the burden of proving the absence of fraudulent intent on the traveller. (*Bentham v. Hoyle*, *ub. sup.*, per Cockburn, C. J.)

A by-law imposing a penalty for not producing and delivering up a ticket applies to an annual ticket (and so presumably to any periodic or season ticket or a mileage ticket); and therefore it has to be produced, although it has not to be delivered up. (*Woodard v. Eastern Counties Railway Co.* (1868), 30 L. J. M. C. 196.)

The principles which were held to apply as above, under sect. 103 of Railways Clauses Consolidation Act, 1845, also apply to Regulation of Railways Act, 1889, s. 5 (3), and extend to a person who used a ticket on a day on which it was not available, contrary to a by-law, where there was no intent to commit fraud. (*Huffam v. North Staffordshire Railway Co.*, [1894] 2 Q. B. 821; 63 L. J. M. C. 225.)

Where a conviction is founded on an invalid by-law, it cannot be supported as disclosing an offence under the section, which the by-law purported to enforce, but to which it was in fact repugnant. (*Dyson v. London and North Western Railway Co.*, *ub. sup.*)

The penalty imposed by sect. 103 is not “a sum of money claimed to be due and recoverable on complaint to a Court of summary jurisdiction” within sect. 6 of Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and is not subject to the procedure for the recovery of civil debts prescribed by sect. 35 of that Act. (*R. v. Paget* (1881), 8 Q. B. D. 151; 51 L. J. M. C. 9.)

Transient
offenders.

52. It shall be lawful for any officer or servant of the promoters (*g*) or lessees (*r*) of any tramway, and all persons called by him to his assistance, to seize and

detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law (s).

(g) See sects. 4 and 24.

(r) Defined in sect. 19.

(s) It must be noted that the power given by this section to seize and detain is strictly limited to the commission or the attempt to commit the offences specified in sect. 51 and those offences only. For detention for any other offence or supposed offence this section will afford no excuse. It extends, moreover, only to those persons whose name or residence is unknown to the officer or servant concerned, and only for so long a time as is necessary to take the person detained before a justice or until he be otherwise duly discharged.

In respect of detentions, which are not justified either by this section or otherwise, either the promoters or lessees or their officers and servants, who were concerned, or all of them, will be liable in damages.

The general principles of liability as between master and servant are discussed and illustrated in the notes to sect. 55, *post*, p. 242. The special question of malicious prosecution and false imprisonment may, however, be conveniently dealt with here. It has been questioned whether a corporation aggregate can be sued for malicious prosecution. Suits for false imprisonment stand on a different footing, as a trespass is there included. The chief authorities against the legality of such a suit are *Stevens v. Midland Counties Railway Co.* (1854), 10 Ex. 352; 23 L. J. Ex. 328, per Alderson, B.; and *Abrath v. North Eastern Railway Co.* (1886), 11 A. C. 247; 55 L. J. Q. B. 457, per Lord Bramwell. The learned lord, in the latter case, seems to have had the subject on his mind, and was anxious to express himself upon it, for, as Lord Selborne, L. C., pointed out, the question had not been argued. On the other side we have the judgment of Fry, J., in *Edwards v. Midland Railway Co.* (1880), 6 Q. B. D. 287; 50 L. J. Q. B. 281, citing *Whitfield v. South Eastern Railway Co.* (1858), E. B. & E. 115; 27 L. J. Q. B. 229 (Lord Campbell, C. J.), and *Green v. London General Omnibus Co.* (1859), 7 C. B. (N. S.) 290; 29 L. J. C. P. 13; and *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392; 68 L. J. Q. B. 196; [1900] 1 Q. B. 22; 68 L. J. Q. B. 1020 (C. A.), the point being abandoned in the Court of Appeal. We have also a considerable number of cases in which the point has not been raised, though it

Sect. 52.

might have been (*e.g.*, *Bank of New South Wales v. Owston* (1879), 4 A. C. 270; 48 L. J. P. C. 25). Other instances will be found among the tramway cases cited below in this note, and see, too, *Rayson v. South London Tramways Co.*, [1893] 2 Q. B. 304; 62 L. J. Q. B. 593 (C. A.). The legality of such a suit may now be taken as settled, so far at least as to make it not worth while to raise it again in an action.

The present section may be compared with Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 104 and 154, and, as already pointed out, like those sections, only extends to the matters therein mentioned. Thus it does not give power to arrest for offences against by-laws, except, *semble*, in so far as such offences also fall within sect. 51. (See *Barry v. Midland Railway Co.* (1867), I. R. 1 C. L. 130; and *Chilton v. London and Croydon Railway Co.* (1847), 16 M. & W. 212; 16 L. J. Ex. 89 (decided on a special Act). *Young v. Great Eastern Railway Co.* (1888), 5 T. L. R. 112, which seems to be a decision to the contrary, is unsatisfactory and difficult to understand.)

Apart from the general principles of the liability of a master for the tortious act of his servant, that is to say, those relating to scope of employment, to implied or express authority, and to the doing of acts for the master's or servant's interest, real or supposed (as to which see *post*, p. 242), the following points should be noted, which have a special reference to liability for detention or arrest by an officer or servant: "Where a railway company" [the same principle applies to a tramway company] "are carrying on business there are certain things which are necessary to be done for the carrying on of the business and the protection of the company, and there are things which, if done at all, must be done at once, and therefore the company must have some person on the spot to do these things, a person acting with common prudence and common sense, clothed with authority to decide as the exigency arises what shall be done. If such person, intending to exercise his authority, makes a mistake and does an act which cannot be justified, the company are responsible, because he was their agent. . . . The fact that there is a person on the spot, who is acting as if he had express authority, is *prima facie* evidence that he had authority, and the presumption that he had authority must be rebutted by the company." (Blackburn, J., in *Moore v. Metropolitan Railway Co.* (1872), L. R. 8 Q. B. 36; 42 L. J. Q. B. 23, following *Goff v. Great Northern Railway Co.* (1861), 3 E. & E. 672; 30 L. J. Q. B. 148.) But the company is only liable in the case where the action of the officer would have been legal, if the facts had been as he supposed, that is, if the offence had been committed; the company is not liable where the act of the officer could not be legal, whether the facts were as he supposed or not, as where he arrested for an offence for which neither he nor the company had power to

arrest. There could be no implied authority in him to do such an act. (*Poulter v. London and South Western Railway Co.* (1867), L. R. 2 Q. B. 534; 36 L. J. Q. B. 294.) It may be, however, that the nature of an officer's or servant's employment is such as not to raise the presumption that he possesses authority to detain or arrest, and it will then rest with the plaintiff to prove such authority. (*Bank of New South Wales v. Owston* (1879), 4 A. C. 270; 48 L. J. P. C. 25.) A special kind of implied authority is that which an officer or servant may have under some circumstances to give into custody a person suspected of stealing his principal's property, but such authority is only implied in a case of emergency, and where the giving into custody is necessary to preserve the principal's property. (*Bank of New South Wales v. Owston, ub. sup.*; *Allen v. London and South Western Railway Co.* (1870), L. R. 6 Q. B. 65; 40 L. J. Q. B. 55.) It is necessary to distinguish for this purpose between an act done with the object of protecting the principal's property, or of recovering it back, and an act done for the purpose of punishing the offender for that which has already been done. (*Abrahams v. Deakin*, [1891] 1 Q. B. 516; 60 L. J. Q. B. 238 (C. A.); *Jones v. Duck* (1900), "Times" Newspaper, Mar. 16 (C. A.); *Hanson v. Waller*, [1901] 1 K. B. 390; 70 L. J. K. B. 231.) *Abrahams v. Deakin* applied this principle to an arrest for a supposed attempt to pass false coin, and the same view appears in the tramway cases which follow. Stephen, J., in *Furlong v. South London Tramways Co.* (1884), C. & E. 316; 48 J. P. 329, held a tramway company liable, where their conductor arrested a person whom he wrongly supposed to have tendered him a false coin in payment of his fare. There was no evidence of specific orders given to the conductor by by-law or otherwise to do so, or not to do so, but the judge thought that the act was covered by the present section, on the ground that the passenger had, as the conductor supposed, attempted to avoid paying his fare within the meaning of sect. 51. We are not told whether the conductor knew or was told the person's name and address. It would seem, however, that this case can no longer be considered good law.

In *Charleston v. London Tramways Co.* (1888), 36 W. R. 367; 4 T. L. R. 157; 32 So. J. 557; 4 T. L. R. 629 (C. A.), overruling Stephen, J., who had given judgment for the plaintiff, it was held that the company were not liable under similar circumstances, though there was the important difference that the company's printed instructions to their conductors forbade them to give into custody without the authority of an inspector or time-keeper in any case but a case of assault, and such authority had not in fact been given. The Divisional Court in this case based their decision on the view that the present section only extends to officers or servants appointed for the purpose by the company. The Court of Appeal based themselves, on the other hand, on the view that there could be no

Sect. 52. authority to the conductor to do the act, as the company would have had no power to do it themselves.

The decision in this last case was extended, in *Knight v. North Metropolitan Tramways Co.* (1898), 78 L. T. 227; 42 So. J. 345; 14 T. L. R. 286, to a case where, as in *Furlong v. South London Tramways Co.*, there was no evidence of authority given to the conductor to arrest under such circumstances, and no evidence that he had been forbidden to do so. It is to be noted that *Furlong v. South London Tramways Co.* is not cited in the reports of either of the cases which practically dispose of it. *Quare* whether Stephen, J., may not have been right, after all, in holding that the present section confers power to arrest a person for attempting to pass false coin in payment of a fare if his name or address is unknown to the officer who arrests him. The difference in the reasons given for their judgment by the two Courts in *Charleston v. London Tramways Co.* is significant; and Bruce, J., in *Knight v. South London Tramways Co.*, propounded yet another reason for his judgment, viz., the general ground that the act was not necessary to protect or preserve the company's property.

In *Wilson v. Leeds Tramways Co.* (1883), "Times" Newspaper, June 30, the Court held, as a matter of law, that the general manager of a tramway company had no authority to arrest—the matter was not one which fell within the present section.

Apthorpe v. Edinburgh Street Tramways Co. (1882), 10 R. 344, was a remarkable decision. A tramway company had statutory power to work omnibuses instead of a tramway on part of their route owing to certain physical difficulties. They made a by-law that passengers, whose journey included passage by both kinds of vehicle, should go into the office at the point where they changed vehicles, and get their through tickets checked in some way. A passenger who had paid his fare for the whole journey, and who was aware of the by-law, did not get his ticket checked, and, being asked by the conductor for his fare for the journey in the vehicle in which he then was, refused to pay. He tried then to leave the car, but the conductor prevented him by force, and called a policeman, who, after he had refused to give his name and address, took him to the station, the charge being that of refusing to pay his fare. The Court not only held the by-law to be reasonable, but held that the conductor had rightfully given him into custody. It is very difficult to understand what the reasons of the Court were. The plaintiff had not committed the offence with which he was charged, and, if any force was used, it was first used by the conductor in preventing the plaintiff from leaving the car. Again, what authority had the conductor to arrest for breach of the by-law? The Court's chief ground seems to have been the curious consideration that no other remedy was open to the company. If they had dismissed the action against the company on the ground

that the conductor was acting outside the scope of his authority, the decision might be accepted as satisfactory. Sect. 52.

In *Barry v. Dublin United Tramways Co.* (1890), 26 L. R. I. 150, the servant of a tramway company was directed to exclude the public from a street which the company were repairing. The company's Act empowered them to exclude the public, and subjected any person who interfered with their servants to a fine. The servant forcibly excluded a person, and then, on the arrival of a constable, gave him into charge for forcing his way into the street in question and for obstruction. This act was held to be outside the scope of the servant's employment, on the ground that the company themselves would have no power to arrest under such circumstances. So, too, would an arrest of a person be, apparently, if he merely refused to show his ticket and give his name and address. (*Cook v. London Tramways Co.* (1886), "Times" Newspaper, June 23.)

Arrest or detention by an officer or servant may, like any other acts, be ratified by his principal, and the general principles of ratification (see *post*, p. 244) apply. Cases where ratification of arrest was sought to be construed from subsequent letters of the principal are *Roe v. Birkenhead, Lancashire and Cheshire Junction Railway Co.* (1851), 7 Ex. 36; 21 L. J. Ex. 9, and *Barry v. Dublin United Tramways Co., ub. sup.* In *Eastern Counties Railway Co. v. Broom* (1851), 6 Ex. 314; 20 L. J. Ex. 196, ratification was sought to be concluded from the appearance of the company's attorney to conduct the charge against the person arrested; and in *Knight v. North Metropolitan Tramways Co., ub. sup.*, from the approval given by an inspector of the company at the time of the arrest, from the grant of leave of absence to the conductor in order that he might attend the police-court, and from the presence of an inspector at the police-court, who, however, took no part in the proceedings.

53. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence (*t*), and it shall be lawful for such promoters (*u*) or lessees (*x*) to refuse to take any parcel that they may suspect to contain goods of a dangerous

Penalty for bringing dangerous goods on the tramway.

Sect. 53. nature, or require the same to be opened to ascertain the fact (*y*).

(*t*) This penalty only covers the special statutory offence created by the present section; the sender will be responsible in addition for any damage caused by his wrongful act, inasmuch as a common law liability (see note (*y*) below) exists independently of the section. (See note (*i*) to sect. 49, head (*v.*).)

The penalty is recoverable under sect. 56.

(*u*) See sects. 4 and 24.

(*x*) Defined in sect. 19.

(*y*) This section is very similar to Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 105; that section, however (besides making the penalty payable to the company), specifies certain kinds of dangerous goods, and makes the company the judges whether other goods are of a dangerous nature or not. Under the present section the meaning of dangerous goods is left vague and unascertainable. On the other hand, the promoters or lessees are given power to refuse to carry any goods they may suspect to be dangerous, or to require them to be opened to ascertain the fact. This makes them the judges as to whether they shall regard any particular goods as dangerous for the purposes of carriage, but it does not justify the infliction of a penalty on anyone for sending any particular goods, merely because the promoters or lessees deem them dangerous. The railway section, on the other hand, does justify such infliction, and consequently would prove effective in doubtful cases where the present section would not.

Compare also Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 446—450, Explosives Act, 1875 (38 & 39 Vict. c. 17), ss. 35—40, and model by-law No. 2, to be made under the last-mentioned Act. (Browne and Theobald on Railways, 3rd ed. p. 731.)

Is guilty knowledge necessary to constitute an offence under this section?

In *Hearne v. Garton* (1859), 2 E. & E. 66; 28 L. J. M. C. 16, a private Act provided a penalty, with imprisonment up to three months if there were no sufficient distress. The offence was practically the same as that described in the present section. It was held that the Act created a criminal offence, and guilty knowledge was necessary to constitute the offence. But Erle, J., said that it would have been different if the Act had merely provided that the sender should pay the company 10*l.*, and had not also authorised imprisonment. No doubt he meant that in that case the Act would not have created a criminal offence at all. It seems, however, that the principle of the case applies to the present section, although it does not provide for imprisonment, for (*i.*) it creates a criminal offence (see note (*o*) to sect. 51); (*ii.*) though it does not

mention imprisonment, yet, coupled with the Summary Jurisdiction Acts, it authorizes imprisonment in default of sufficient distress, just like the Act on which *Hearne v. Garton* depended. Sect. 53.

The above case is valuable as a decision upon a section practically identical with the present section, but in so far as it rests on the broad maxim, which used to be considered irrefragable, that "Actus non facit reum nisi mens sit rea," its conclusion is dubious. It seems to be correct to say, as Stephen, J., pointed out in *Cundy v. Lecoq* (1884), 13 Q. B. D. 207; 53 L. J. M. C. 125, which was decided after *R. v. Prince* (1875), L. R. 2 C. C. 154; 44 L. J. M. C. 122, that the maxim is not of universal application, but that it is necessary to look at the object of the particular Act that is under consideration, to see whether and how far knowledge is of the essence of the offence created.

There is still, however, a presumption in favour of the maxim. (*Chisholm v. Douulton* (1889), 22 Q. B. D. 736; 58 L. J. M. C. 133; *Derbyshire v. Houlston*, [1897] 1 Q. B. 772; 66 L. J. Q. B. 569.) But it is submitted that *Hearne v. Garton* is now open to review, and that it may be argued whether the present section is such that the presumption in favour of the maxim is rebutted. The classes of enactments in which such a rebuttal has been held to exist are usefully tabulated in *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; 64 L. J. M. C. 218. They are (i.) cases where, though the proceeding is criminal in form, it is really only a summary mode of enforcing a public right; (ii.) cases of public nuisances; (iii.) cases relating to acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty—such as innocent possession against the Revenue Statutes or the Adulteration Acts, or the innocent reception of lunatics, or the innocent supplying of a drunken person with intoxicating liquor. It seems to the writer that the present section comes under the last class. The point of it is to prevent the sending of explosives without notice, in the interest of the public as well as of the promoters or lessees. If the explosives are so sent, the mischief is done, and the sender is responsible for it, whether he knew what he was doing or not. The point is by no means clear, but the above view is rather supported by *Hartley v. Wilkinson* (1885, 49 J. P. 726, where a driver was convicted without *mens rea* for breach of a by-law prohibiting the emission of smoke or steam.

The presence or absence of guilty knowledge, however, makes no difference to the civil liability, if any, of the sender to the promoters or lessees, since he is in fact the person who sent the dangerous goods. (*Hearne v. Garton*, *ub. sup.*)

There is a general duty to give notice of the character of dangerous goods to the person, to whom one presents them for carriage, and an implied undertaking not to present such goods without such notice (*Williams v. East India Co.* (1802), 3 East 192; *Brass v. Maitland*

Sect. 53. (1856), 6 E. & B. 470; 26 L. J. Q. B. 49); and a person guilty of a breach of such duty is responsible for any injury which may result either to the carrier or to his servants by reason of such breach. (*Farrant v. Barnes* (1862), 11 C. B. (N. S.) 553; 31 L. J. C. P. 137.) See also *Alston v. Herring* (1856), 11 Ex. 822; 25 L. J. Ex. 177.

Where dangerous goods are brought into a passenger carriage and a passenger is injured by them, the carriers are not liable in damages unless they were guilty of negligence in permitting the dangerous goods to be introduced, and it rests on the plaintiff to show that there was in fact such negligence. (*East Indian Railway Co. v. Kalidas Mukerjee*, [1901] A. C. 396; 70 L. J. P. C. 63.)

Penalty for persons using tramways with carriages with flange wheels, &c.

54. If any person (except under a lease (*z*) from or by agreement (*a*) with the promoters (*b*), or under license from the Board of Trade (*c*), as by this Act provided,) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway (*d*), such person shall for every such offence be liable to a penalty not exceeding twenty pounds (*e*).

(*z*) See sect. 19.

(*a*) Such an agreement must only be of an incidental kind, such as that made with local authorities for the conveyance of sanitary refuse, &c., and must not amount to a lease (see note (*n*) to sect. 19), or a delegation of statutory powers (see note (*g*) to sect. 44). It will be observed that there is no mention in this section of members of the public to whom a tramway is left open under sect. 19 (see note (*k*) thereto).

(*b*) See sects. 4 and 24.

(*c*) Under sect. 35 of this Act.

(*d*) These words are discussed, and the authorities on them set out, in note (*k*) to sect. 34. Compare also sect. 62, which contains identical words.

(*e*) The only reported conviction under this section is in *Cottam v. Guest* (1880), 6 Q. B. D. 70: 50 L. J. M. C. 174, which is fully set out in note (*k*) to sect. 34. It appears from that case that there is no need that there should have been any actual obstruction of the tramway (as to which see note (*k*) to sect. 50), or injury to the promoters or persons working the tramway, other than that described in the present section, in order that a conviction may be justified.

The offence, however, is created by this section, and the penalty here enacted is the only remedy for it, save the ancillary remedy of injunction. (See note (*i*) to sect. 49, head (iv).)

Miscellaneous.

55. The promoters (*f*) or lessees (*g*), as the case may be, shall be answerable for all accident, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries (*h*).

Promoters or lessees to be responsible for all damages.

(*f*) See sects. 4 and 24.

(*g*) Defined in sect. 19.

(*h*) *General scope and intention of the section.*—It is submitted, on the principle laid down in *River Wear Commissioners v. Adamson* (1877), 2 A. C. 743; 47 L. J. Q. B. 193, that this section is not intended to enlarge the liability of promoters and lessees in respect of the matters mentioned therein, or to create new liabilities, but is added, as it were, *ex majori cautela*, or by way of summing up existing liabilities comprehensively, and impressing on promoters and lessees that their common law liabilities are not in any way affected by their special privileges. This also seems to be the logical result of the decision in *Brocklehurst v. Manchester, Bury, Rochdale and Oldham Steam Tramways Co.* (1886), 17 Q. B. D. 118.

A tramcar had injured a horse, and it was found that neither plaintiff nor defendants were guilty of negligence. It was held that this section did not render the defendants liable, but applied only to wrongful acts or defaults, in spite of the fact that the section uses the plain words “act or default.” Pollock, B., said: “I think the object of this clause, which is one of a number headed ‘Miscellaneous,’ was to determine who shall be liable when there is liability, and not to increase the liability of the company or promoters or lessees beyond what would exist in the absence of such a clause”; and Wills, J., pointed out that any other construction would put the promoters or lessees in a considerably worse position than if their tramway were unauthorised.

In some respects the section does not even have the modified effect which Pollock, B., attributed to it, namely, of determining who shall be liable when there is liability, for it has been decided, in the cases set out in note (*r*) to sect. 29, and again discussed further on in the present note, that the last sentence of this section does not have the effect of fixing the promoters or lessees with liability, where contracts have been made with the road authority under sect. 29.

Sect. 55.

The same view applies, it would seem, to the liability of promoters or lessees to their own employés. The actual words of the section, "answerable for all accident, damages, and injuries happening through their act or default, or through the act or default of any person in their employment," would cover such liability and make it universal, though it may be suggested that the words in themselves are rather intended to refer to accidents to persons who are not in the promoters' or lessees' own employ; but, on the principle enunciated above, the section must not be taken to enlarge the promoters' or lessees' liability in this matter any more than in the previous matter. It would follow, then, that the promoters or lessees may avail themselves of the defence of common employment, or any other defence which is open to them by common law or statute.

It remains, then, to discuss the general principles on which the liability of promoters and lessees rests in respect of matters which are included in the present section. It will be observed that the cases which deal with tramways are practically decided without reference to it.

Liability of Promoters and Lessees in respect of Works.

"No action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing that which the Legislature has authorised, if it be done negligently." (*Geddis v. Proprietors of Bann Reservoir* (1878), 3 A. C. 430, 455—6, per Lord Blackburn.)

"Some things, I think, are now no longer open to discussion. No action can be maintained for anything which is done under the authority of the Legislature, though the act is one which, if unauthorised by the Legislature, would be injurious and actionable. The remedy of the party who suffers the loss is confined to recovering such compensation as the Legislature has thought fit to give him." (*Caledonian Railway Co. v. Walker's Trustees* (1882), 7 A. C. 259, 293, per Lord Blackburn.)

"If the Legislature directs or authorises the doing of a particular thing, the doing of it cannot be wrongful; if damage results from the doing of that thing, it is just and proper that compensation should be made for it, and that is generally provided for in the statutes authorising the doing of such things. But no action lies for what is *damnum sine injuria*; the remedy is to apply for compensation under the provision of the statutes legalising what would otherwise be a wrong. This, however, is the case, whether the thing is authorised for a public purpose or a private profit. . . . The principle is that the act is not wrongful, not because it is for a public purpose, but because it is authorised by the Legislature. . . .

But though the Legislature has authorised the execution of the works, it does not thereby exempt those authorised to make them from the obligation to use reasonable care that in making them no unnecessary damage be done." (*Mersey Docks and Harbour Board Trustees v. Gibbs* (1866), L. R. 1 H. L. 93, 112; 35 L. J. Ex. 225, 231—2, per Blackburn, J.)

What is now settled law is expressed in the above three statements of Lord Blackburn. Nothing that the Legislature has sanctioned can be actionable; the only remedy is the compensation, if any, which the Legislature has provided (*e.g.*, by the incorporation of the Lands Clauses Acts. Cf. sect. 15 of this Act). If the Legislature has provided a particular way in which a thing shall be done, it may and must be done in that way, whatever the consequences may be to anyone, and whether compensation be provided for or not. But, generally, statutory powers must be exercised in a reasonable way, and in such a manner as not to cause unnecessary injury, and in particular there must be no negligence in their exercise. Reasonable exercise and absence of negligence are two aspects of the same thing, and the Legislature cannot be supposed to have authorised either. "I think that if by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is . . . 'negligence' not to make such reasonable exercise of their powers." (*Geddis v. Proprietors of Bann Reservoir*, *ub. sup.*, at p. 456, per Lord Blackburn.)

The contrast pointed out by Lord Blackburn between the remedy by action and the remedy by compensation may be seen in the two cases of *Baily v. De Crespigny* (1869), L. R. 4 Q. B. 180; 38 L. J. Q. B. 98; and *Long Eaton Recreation Grounds Co., Ltd. v. Midland Railway Co.*, [1902] 2 K. B. 574; 71 L. J. K. B. 837 (C. A.), both of which are concerned with the breach of restrictive covenants by the exercise of statutory powers. But the mere absence of any other remedy for the person injured, by compensation or otherwise, does not enable him to maintain an action for damage caused by a proper exercise of statutory powers (*East Fremantle Corporation v. Annois*, [1902] A. C. 213; 71 L. J. P. C. 39), though "it affords a reason, though not a conclusive one, for thinking that the intention of the Legislature was, not that the thing authorised should be done at all events, but only that it should be done, if it could be done, without injury to others." (*Metropolitan Asylum District v. Hill* (1881), 6 A. C. 193, 203; 50 L. J. Q. B. 353, 359, per Lord Blackburn.)

The fact that the statutory works made or acts done amount to a nuisance does not seem in itself to give anyone a right to restrain them, though no doubt it is an element to be considered in discussing the question whether the statutory powers have been exceeded or not. (See *Harrison v. Southwark and Vauxhall Water Co.*,

Sect. 55. [1891] 2 Ch. 409; 60 L. J. Ch. 630.) It is a logical conclusion from the principles enunciated above, that if the works or acts which are reasonably necessary and proper for the carrying out of the statutory powers involve a nuisance, and the powers conferred by the Act in question are wide enough to justify such a nuisance, then it must be tolerated and cannot be restrained. (See *London, Brighton and South Coast Railway Co. v. Truman* (1885), 11 A. C. 45, 60; 55 L. J. Ch. 354, 362.) Lord Watson's distinction, in *Metropolitan Asylum District v. Hill* (1881), 6 A. C. 193, at p. 213; 50 L. J. Q. B. 353, at pp. 364—5, between statutes which are imperative and statutes which are merely permissive (which was approved in *Canadian Pacific Railway Co. v. Parke*, [1899] A. C. 535; 68 L. J. P. C. 89), though perhaps somewhat open to misapprehension, seems to have been intended to convey the same idea as the principle stated above. His own language at (L. R.), p. 212; (L. J.), p. 364, bears this out, and it is so interpreted by Lord Blackburn in *London, Brighton and South Coast Railway Co. v. Truman, ub. sup.*, at (L. R.), pp. 64—5; (L. J.), p. 364.

Sometimes, however, an Act contains special words preserving the promoters' liability for nuisance (*e.g.*, Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 29, for which see *Attorney-General v. Gas Light and Coke Co.* (1877), 7 Ch. D. 217; 47 L. J. Ch. 534; and *Jordeson v. Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217; 68 L. J. Ch. 457 (C. A.)), and in such a case the promoters are liable, even when they cannot exercise their statutory powers without committing the nuisance; or the Act, under which it is sought to justify the nuisance, may be of such a character, *e.g.*, a sanitary Act, that the Court will not hold that the Legislature can have intended nuisances to be justified by its provisions (*Vernon v. Vestry of St. James, Westminster* (1880), 16 Ch. D. 449; 50 L. J. Ch. 81 (C. A.)); or the Act in question may be held by the Court not to justify the particular nuisance complained of, as in *Shelfer v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287; 64 L. J. Ch. 216 (C. A.), where this was held with regard to the Electric Lighting Acts, 1882 and 1888, and a remedy was granted both to the lessees and to the reversioners of the property affected, in respect of structural injury and a continuing nuisance due to the works of the undertakers. See also *Powell v. Fall* (1880), 5 Q. B. D. 597; 49 L. J. Q. B. 428 (C. A.), on Locomotive Acts, 1861 and 1865 (24 & 25 Vict. c. 70 and 28 & 29 Vict. c. 83); and *Hawley v. Steele* (1877), 6 Ch. D. 521; 46 L. J. Ch. 782, on Defence Act, 1842 (5 & 6 Vict. c. 94).

The question, then, will depend in each case on the words or implication of the Act of Parliament or Order. (Compare *Gas Light and Coke Co. v. Vestry of St. Mary Abbott's, Kensington* (1885), 15 Q. B. D. 1, 5—6; 54 L. J. Q. B. 414 (C. A.).)

Clauses rendering promoters liable for nuisance committed on

their lands or otherwise are not uncommon in Tramway Acts and Orders (see *post*, p. 425) and in Light Railway Orders (see *post*, p. 592), particularly where a generating station is proposed. Sect. 55.

Apart from any question of compensation, an injunction will be granted to restrain a vexatious exercise of statutory powers where, for instance, there has been an unnecessary disregard of private rights or no proper exercise of discretion, in fact, conduct amounting to negligence (*Biscoe v. Great Eastern Railway Co.* (1873), L. R. 16 Eq. 636), or where there is reason to suspect bad faith. (*Lynch v. Commissioners of Sewers of the City of London* (1886), 32 Ch. D. 72; 55 L. J. Ch. 409 (C. A.).) But the Court will not interfere where what is done is reasonably necessary for the work authorised by statute, even though a nuisance is caused (*Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409; 60 L. J. Ch. 630); nor will it impose on the promoters any particular method of doing their works, provided that the method adopted by them has been adopted *bonâ fide* and under proper advice. (*Wilkinson v. Hull, &c. Railway and Dock Co.* (1882), 20 Ch. D. 323; 51 L. J. Ch. 788 (C. A.); see also *Kemp v. South Eastern Railway Co.* (1872), L. R. 7 Ch. 364; 41 L. J. Ch. 404 (C. A.).)

Similar principles apply to the granting of injunctions to restrain the unauthorised use (or the use for a collateral purpose) of land acquired under statutory powers (though the powers will be construed less strictly in the case of public bodies entrusted with powers for public purposes than in the case of private adventurers) (*Galloway v. London Corporation* (1866), L. R. 1 H. L. 34; 35 L. J. Ch. 477), or the acquisition of land under statutory powers for an unauthorised purpose. (*Flower v. London, Brighton and South Coast Railway Co.* (1865), 2 Dr. & S. 330; 34 L. J. Ch. 540.) As to the grant of an injunction or damages, A. L. Smith, L. J., laid down what he described as a "good working rule," in *Shelfer v. City of London Electric Lighting Co.*, *ub. sup.*, at (L. R.), p. 322; (L. J.), p. 229, as follows: "Damages in substitution for an injunction may be given (1) if the injury to the plaintiff's legal rights is small, (2) and is one which is capable of being estimated in money, (3) and is one which can be adequately compensated by a small money payment, (4) and the case is one in which it would be oppressive to the defendant to grant an injunction. There may also be cases in which, though the four above-mentioned requirements exist, the defendant by his conduct, as, for instance, hurrying up his buildings so as if possible to avoid an injunction, or otherwise acting with a reckless disregard to the plaintiff's rights, has disentitled himself from asking that damages may be assessed in substitution for an injunction."

It should be noted that in Scotland any member of the public can maintain an action for the purpose of obtaining general relief on behalf of the public without further proof of peculiar damage to

Sect. 55. himself. (*Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 24 R. (H. L.) 8; 66 L. J. P. C. 1.)

These general principles apply equally to works done in the construction and repair of tramways by virtue of statutory powers and to the user of the completed works of the statutory undertaking. Some special instances of their application, however, should be referred to.

I. *Works of Construction and Repair.*

A. *Liability of promoters and lessees.* — Persons taking up a road by virtue of statutory powers must do the work in such a way as to secure passers-by, who are not themselves negligent, from injury. For instance, they must not leave their works in such a condition that a reasonable person would think them safe to walk upon, when in fact they are not. (*Drew v. New River Co.* (1834), 6 C. & P. 754.)

A breach of a covenant for quiet enjoyment is not committed by persons who cause structural damage to their tenant's house by works done under statutory powers; temporary inconvenience caused by interference with the access to a house by works, whether statutory or otherwise, does not constitute a breach of such a covenant. (*Manchester, Sheffield and Lincolnshire Railway Co. v. Anderson*, [1898] 2 Ch. 394; 67 L. J. Ch. 568 (C. A.).) In *Goldberg v. Liverpool Corporation* (1900), 82 L. T. 362 (C. A.), it was held that a section empowering the promoters to repair, alter and reconstruct the tramways or any of them as they might see fit, and to construct, erect, lay down and maintain in, over or under the surface of any street all such works as might be necessary or expedient for the purpose of adapting the tramways or any of them to the use of mechanical power, empowered them to commit a nuisance in the *bonâ fide* exercise of such powers. They erected a pole and fuse-box close to the plaintiffs' principal entrance, in such a position as undoubtedly to constitute a nuisance. A suggestion was made that they had done this *malâ fide*, because the plaintiffs, unlike most other frontagers, had refused to allow a rosette to be affixed to their building. The Court refused to accept this view, and held that, as there was no *mala fides* or abuse of statutory powers, the action could not be maintained.

Contrast with this *Chaplin v. Westminster Corporation*, [1901] 2 Ch. 329; 70 L. J. Ch. 679. Here the Court was of opinion that a local authority's power to erect electric light standards did not extend to the commission of a nuisance, but refused an injunction because the defendants were acting in the *bonâ fide* exercise of their statutory powers and the plaintiff was not suing in respect of a private right, namely access to his premises, but in respect of interference with his facility for transferring goods from vans across the public pavement to his premises, which was an individual

interest in a public right, not a private right. In connection with the preceding two cases reference should be made to *Detroit City Railway Co. v. Mills* (1891), 85 Mich. 634. As to the cases where a plaintiff can sue without joining the Attorney-General, see *Boyce v. Paddington Borough Council*, [1903] 1 Ch. 109; 72 L. J. Ch. 28; on appeal (1903), W. N. 143; 19 T. L. R. 38, 648. For a case where posts were erected on the highway with no statutory authority, and the persons responsible were properly indicted for a nuisance, see *R. v. United Kingdom Electric Telegraph Co., Ltd.* (1862), 2 B. & S. 647 n.; 31 L. J. M. C. 166, and see also the cases on unauthorised tramways in the note to the preamble to this Act.

Sect. 55.

A tramway company has been indicted for a common nuisance in having erected a timekeeper's box in the highway. (*R. v. North Metropolitan Tramways Co.* (1889), "Times" Newspaper, March 7.)

Reference may also be made here to the cases in which the rights of local or road authorities with respect to the erection of wires along or across roads are discussed, namely, *Wandsworth Board of Works v. United Telephone Co., Ltd.* (1884), 13 Q. B. D. 904; 53 L. J. Q. B. 449 (C. A.); *National Telephone Co., Ltd. v. Constables of St. Peter Port*, [1900] A. C. 317; 69 L. J. P. C. 74; and *Finchley Electric Light Co. v. Finchley Urban District Council*, [1903] 1 Ch. 437; 72 L. J. Ch. 297 (C. A.).

By London Overhead Wires Act, 1891 (54 & 55 Vict. c. lxxvii.), any company or person, who has placed a wire or any support or attachment thereof over a street or on or over a building or land within fifty feet of a street within the administrative County of London, shall give notice within a month to the County Council and to the local authority concerned (such local authority being the County Council as regards any streets, &c. vested in them or under their control). The County Council may make by-laws to regulate wires with the approval of the Board of Trade, and such by-laws have been made. There are also provisions for inspection, for the removal of dangerous wires, and for penalties. The right of carrying or attaching wires over or to any land or building is only to be acquired by agreement, and the liability for damage caused by a wire or its supports is preserved.

B. *Liability as between promoters or lessees and contractors.*—“Ever since *Quarman v. Burnett* (1840), 6 M. & W. 499; 9 L. J. Ex. 308, it has been considered settled law that one employing another is not liable for his collateral negligence unless the relation of master and servant existed between them. So that a person employing a contractor to do work is not liable for the negligence of that contractor or his servants. On the other hand, a person causing something to be done, the doing of which casts on him a duty, cannot escape from the responsibility attaching to him of seeing that duty performed by delegating it to a contractor. He may bargain with the contractor that he shall perform the duty, and

Sect. 55.

stipulate for an indemnity from him if it is not performed, but he cannot thereby relieve himself from liability to those injured by the failure to perform it." (*Dalton v. Angus* (1881), 6 A. C. 740, 829; 50 L. J. Q. B. 689, 750, per Lord Blackburn.)

The first rule laid down above—that the relation of master and servant must exist if there is to be liability for collateral negligence—extends not only to the particular kind of negligence dealt with in *Quarman v. Burnett*, but to every sort of collateral negligence, except perhaps in cases of nuisance, and even to cases where the promoters reserve to themselves power to dismiss the contractors' workmen. (*Reedie v. London and North Western Railway Co.* (1849), 4 Ex. 244; 20 L. J. Ex. 65.) For the meaning of "collateral" or "casual" negligence, see *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335; 65 L. J. Q. B. 363, where Rigby, L. J., defines it as "negligence other than the imperfect or improper performance of the work which the contractor is employed to do." (Compare *Penny v. Wimbledon Urban District Council*, [1899] 2 Q. B. 72; 68 L. J. Q. B. 704, per A. L. Smith, L. J.) The second rule—that where there is a duty on the principal, and the contractor fails to perform it, the principal still remains liable for any injury or damage caused by the breach—extends to every kind of duty.

(i.) Where a statute imposes a duty, as for instance to build a bridge in a particular way (*Hole v. Sittingbourne and Sheerness Railway Co.* (1861), 6 H. & N. 488; 30 L. J. Ex. 81), or to fill up a trench made in a road (*Gray v. Pullen* (1864), 5 B. & S. 970; 34 L. J. Q. B. 265), or to make good damage done to a road generally. (*West Riding and Grimsby Railway Co. v. Wakefield Local Board* (1864), 33 L. J. M. C. 174.)

(ii.) Where the works in question interfere with the highway. Here the principal is under a general duty to persons who lawfully pass thereon, and persons who lawfully occupy the highway, whether the interference is made without statutory powers (*Pickard v. Smith* (1861), 10 C. B. (N. S.) 470; *Tarry v. Ashton* (1876), 1 Q. B. D. 314; 45 L. J. Q. B. 260) or with statutory powers (*Penny v. Wimbledon Urban District Council*, *ub. sup.*), and whether the injury be done to passers-by (*Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392; 68 L. J. Q. B. 1016), or to the pipes and other property of other persons which are laid under the highway. (*Hardaker v. Idle District Council*, *ub. sup.*) This last-cited case contains a valuable summary of all the authorities on the general question (per Lindley, L. J.). See, too, in America, *Woolf v. Third Avenue Railroad Co.* (1902), 74 N. Y. S. 336; 67 App. Div. 605. *Maxwell v. British Thomson Houston Co.* (1902), 18 T. L. R. 278, is a recent case on a similar point—the liability, as between contractor and sub-contractor, for injuries caused to a passenger on a tramcar by a derrick used in erecting standards for the purpose of electric traction.

Cameron v. Patent Cable Tramways Corporation, Ltd. (1885), "Times" Newspaper, Ap. 22; (1886) Jan. 14 (C. A.), was an action against the promoters of a tramway, their contractors and the latter's sub-contractors for damages for personal injury due to the defendants' negligence, and in particular for their neglect of sect. 27 of this Act in not watching and fencing their works. The jury were directed by Lord Coleridge, C. J., that the promoters had parted with the control, and therefore with the responsibility of the works, that their only liability was to fence, watch and light their works under sect. 27, and that there was no case against them in this respect. The jury found that there had been no negligence, and gave a verdict for the defendants. In the Court of Appeal the case against the promoters was abandoned; the Court found for the other defendants on the facts, and did not criticise the direction which had been given to the jury. It is submitted, however, that that direction cannot be supported in view of the decisions cited above. (See also *Gray v. Pullen* (1864), 5 B. & S. 970; 34 L. J. Q. B. 265; and *Goodson v. Sunbury Gas Consumers' Co.* (1896), 75 L. T. 251.)

There is no liability where the road has been properly reinstated, but a natural subsidence afterwards occurs. (*Hyams v. Webster* (1868), L. R. 4 Q. B. 138; 38 L. J. Q. B. 21 (Ex. Ch.)) The principle enunciated under this head must, however, be qualified in the case of tramway promoters, where a contract has been made with a road authority under sect. 29 of this Act for the repair of the road. This is now settled by the cases discussed in note (r) to sect. 29, viz., *Howitt v. Nottingham Tramways Co.* (1883), 12 Q. B. D. 16; 53 L. J. Q. B. 21; *Allred v. West Metropolitan Trams Co.*, [1891] 2 Q. B. 398; 60 L. J. Q. B. 631 (C. A.); and *Barnett v. Poplar Borough*, [1901] 2 K. B. 319; 70 L. J. K. B. 698. The Courts have refused to hold that the road authority, who have made an arrangement under sect. 29, are in the same position as contractors to a body, which is under a duty to protect persons using the highway from the effects of their works, and therefore liable for a breach of that duty committed by their contractors; in spite of the proviso to the present section, whereby the promoters or lessees shall save harmless all road authorities from all damages and costs in respect of accidents, damages and injuries. The Courts pointed out that the accidents, &c. contemplated were those which happened through the act or default of the promoters or lessees or their employés. But see the note above (p. 223) as to the general scope of the present section, and *quare* whether the Courts have paid sufficient attention to the general principle of liability enunciated under the present head.

Cases where there have been disputes between the proprietors of a tramway and other persons not contractors, with respect to liability for accident due to works on a public way, are: *Barham v. Ipswich Dock Commissioners* (1885), 54 L. T. 23, see sect. 26, note (q);

Sect. 55. and *Sadler v. South Staffordshire and Birmingham District Steam Tramways Co.* (1889), 23 Q. B. D. 17; 58 L. J. Q. B. 421; and *Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 24 R. (H. L.) 8; 66 L. J. P. C. 1 (see below, p. 234).

(iii.) There is a general duty on the principal to protect others, where the works are dangerous or of such a nature that they may cause injury (*Penny v. Wimbledon Urban District Council*, [1899] 2 Q. B. 72, 78; 68 L. J. Q. B. 704, 708 (C. A.); *The Snark*, [1900] P. 105; 69 L. J. P. 41 (C. A.)); as where the works interfered with an adjacent owner's right of support (*Bower v. Peate* (1876), 1 Q. B. D. 321; 45 L. J. Q. B. 446; *Dalton v. Angus* (1881), 6 A. C. 740; 50 L. J. Q. B. 689; *Hughes v. Percival* (1883), 8 A. C. 443; 52 L. J. Q. B. 719; *Lemaitre v. Davis* (1881), 19 Ch. D. 281; 51 L. J. Ch. 173), or where fire spread to the adjoining property (*Black v. Christchurch Finance Co.*, [1894] A. C. 48; 63 L. J. P. C. 32), or where a nuisance was caused by the works. (*Howland v. Dover Harbour Board* (1898), 14 T. L. R. 355.)

(iv.) But there is no duty on the principal to provide against accidents, which could not have been foreseen and which did not naturally arise from the works, as the dropping of a tool out of window by a man employed in plastering the inside of a house. (*Pearson v. Cox* (1877), 2 C. P. D. 369 (C. A.).)

(v.) Where the works are unlawful, there is of course a general breach of duty on the part of the principal, and he remains liable. (*Ellis v. Sheffield Gas Consumers' Co.* (1853), 2 E. & B. 767; 23 L. J. Q. B. 42; *Brownlow v. Metropolitan Board of Works* (1864), 16 C. B. (N. S.) 546; 33 L. J. C. P. 233.)

Compare with, and add to, the above-mentioned heads the case where the principal supplies plant or material for the use of the contractor, and is under an obligation to take reasonable care that such plant or material is in a proper condition, and is therefore liable for an accident which occurs through a defect in it. (*Heaven v. Pender* (1883), 11 Q. B. D. 503; 52 L. J. Q. B. 702 (C. A.).)

II. Completed Works.

London, Brighton and South Coast Railway Co. v. Truman (1885), 11 A. C. 45; 55 L. J. Ch. 354, treated as settled law the principle that, as far as railway Acts generally are concerned, the proper exercise of the statutory powers without negligence may include an otherwise actionable nuisance, and no action will lie in respect of it. It extends the principle from the compulsory provisions of such Acts to lands purchased by agreement under a permissive power contained in such an Act. The Act empowered the company to purchase lands by agreement for (*inter alia*) the purpose of keeping cattle. The company was held to be justified in committing a nuisance by keeping a large number of cattle on land so purchased.

This case is the direct descendant of *R. v. Pease* (1832), 4 B. & Ad. 30; 2 L. J. M. C. 26; *Vaughan v. Taff Vale Railway Co.* (1860), 5 H. & N. 679; 29 L. J. Ex. 247 (Ex. Ch.); *Hammersmith and City Railway Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265, and other authorities, and must be taken as settling finally that in the case of railways, and in the absence of any extraordinary provisions, the fact that a nuisance is caused by the otherwise reasonable exercise of statutory powers is no ground for an injunction.

But this principle is not applicable as a matter of course to anything except railways. *Quare* whether it would necessarily apply to light railways, even those of the type which most closely approximate to railways proper. It does not necessarily apply to a tramway.

Where a tramway company's special Act did not specifically provide for the acquisition of stables by the promoters, though stables were necessary for the working of the tramways, and the promoters acquired land by agreement, built stables thereon, and conducted such stables in such a manner as to constitute a nuisance, they were restrained from so doing. (*Rapier v. London Tramways Co.*, [1893] 2 Ch. 588; 63 L. J. Ch. 36 (C. A.)) The fact that there was no specific provision in the Act with regard to stables effectually distinguishes this case from *London, Brighton and South Coast Railway Co. v. Truman*, *ub. sup.*, though in both cases the land on which the nuisance was committed was acquired by agreement. Further, in the tramway case, there was not, as in the railway case, a line of authorities in favour of the presumption that the exercise of statutory powers may extend with impunity to the commission of a nuisance. Similar decisions with regard to tramway stables had already been given by Bacon, V.-C., in *Orton v. North Metropolitan Tramways Co.* (1874), "Times" Newspaper, June 11, and *Pearce v. London Tramways Co.* (1874), "Times" Newspaper, June 13. But inasmuch as both a railway and a tramway are, in a sense, legalised nuisances, it seems that in a case where the statutory powers were sufficiently wide, the railway principle would be extended to tramways. It was, in fact, expressly so extended by Kekewich, J., in *National Telephone Co. v. Baker*, [1893] 2 Ch. 186, at p. 203; 62 L. J. Ch. 699, 705. He says: "Provisional Orders in connection with tramways and many other undertakings of a public character are now common, and, I think, must be treated as a 'well-known and recognised class of legislation,' equally as much as the Railway Acts, which were referred to in those terms by the Lord Chancellor in *London, Brighton and South Coast Railway Co. v. Truman*. The Railway Acts (again using (*sic*) the language of the Lord Chancellor in the same case) were assumed to establish the proposition that the railway might be made and used whether a nuisance were created or not; and, in my judgment, a like proposition must be assumed to be established by the Provisional Orders,

Sect. 55. one of which is here under consideration." He held in that case that the promoters of the tramway were not liable for injury caused by their electric appliances to the apparatus of a telephone company, the promoters having adopted the best available system of electric traction. The Legislature had sanctioned the use of electrical power, not directly but through the Board of Trade, and therefore had impliedly authorised any results which might spring from a reasonable use of such power. The other aspects of this case are discussed below in the section which deals with electricity, together with the important case of *Eastern and South African Telegraph Co., Ltd. v. Cape Town Tramways Companies, Ltd.*, [1902] A. C. 381; 71 L. J. P. C. 122.

In this latter case also a tramway company was held not to be liable for damage caused by an escape of electricity from that part of their works which was authorised by statute, on the ground that such escape was a natural incident of what was authorised.

In *Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 24 R. (H. L.) 8; 66 L. J. P. C. 1, on the other hand, it was held that neither the general nor the special Acts justified a tramway company in clearing their track of snow, piling it up at the sides of the track, and then scattering salt upon it, so as to create a serious public nuisance. Lord Davey puts the grounds of the decision clearly: "They have no statutory right to commit a nuisance; and the only attempt to make out or support that plea was by arguing that the statutory power of maintaining their tramways necessarily involved (and I say 'necessarily' deliberately) the creation of this nuisance; and that in fact the statute has, if not expressly yet impliedly, authorised the nuisance. I do not think that that is made out in this case, and I do not think there are any grounds whatever by which the respondents can maintain that the operations which I have held to be a nuisance were sanctioned or permitted by their Acts." This case was distinguished in *City of Montreal v. Montreal Street Railway Co.* (1903), 19 T. L. R. 568.

Sadler v. South Staffordshire and Birmingham District Steam Tramways Co. (1889), 23 Q. B. D. 17; 58 L. J. Q. B. 421, was a case dealing with the statutory powers and liabilities of a tramway company from a different point of view. An accident was caused by the company's car, which ran off the line at a point where the company's line joined the line of another system, over which the company had running powers. It ran off the line owing to a defect in the points at the place of junction, but it was not clear whose duty it was to repair the points. It was held that in any event the owners of the car were liable, because their statutory powers did not extend to authorise their running along the highway on a track which was in a defective condition.

A railway company owned a tramway which at one point crossed their line. They maintained gates at that point, but never closed

them. It was held that they were liable to the licensee of the tramway for the loss of his horse, which was due to their neglect to keep the gates closed, on the ground that the licensee had a right to expect that the gates should be properly managed, and it was the company's duty so to manage them. (*Marfell v. South Wales Railway Co.* (1860), 8 C. B. (N. S.) 535; 29 L. J. C. P. 315.)

In *Dublin United Tramways Co., Ltd. v. Fitzgerald*, [1903] A. C. 532; 72 L. J. P. C. 52 (see *ante*, p. 145), a tramway company were held liable for injuries caused by the worn and slippery condition of their track. See also the cases on accidents caused by defects in the promoters' rails or their position cited in note (k) to sect. 25.

It would be a ground for defence for the promoters or lessees that they had employed a competent engineer, who had used the best methods and the best materials, but not merely that they had employed a competent engineer. (*Grote v. Chester and Holyhead Railway Co.* (1848), 2 Ex. 251.) But this principle does not apply where there is a patent defect in the promoters' works. (*Sharp v. Gray* (1833), 9 Bing. 457; 2 L. J. C. P. 45; *Grote v. Chester and Holyhead Railway Co.*, *ub. sup.*, per Parke, B.) A purchase of plant, &c. from competent manufacturers is no defence, if the manufacturers have been negligent. (*Burns v. Cork and Bandon Railway Co.* (1862), 13 Ir. C. L. 543.) And in general a carrier is to be taken to contract with a passenger to take due care (that expression including the use of skill and foresight) to carry the passenger safely (*Readhead v. Midland Railway Co.* (1869), L. R. 4 Q. B. 379; 38 L. J. Q. B. 169 (Ex. Ch.)), and this includes due care on the part of those, with whom the carrier has contracted for the execution of his works. (*Francis v. Cockrell* (1870), L. R. 5 Q. B. 184; 39 L. J. Q. B. 113; affirmed L. R. 5 Q. B. 501; 39 L. J. Q. B. 291.)

III. Electricity.

The liability of promoters and lessees in respect of matters arising from their user of electric energy is logically a portion of the liability in respect of completed works, which has just been discussed. It is, however, of such a special nature that it is more convenient to treat it separately.

The backwardness of Great Britain in the practical applications of electricity, and particularly in the matter of electric traction, is responsible for the present dearth of British judicial decisions on electrical subjects. It will, therefore, be desirable, if not absolutely necessary, to make some reference to the law of the country where electric traction and every other application of electricity has been developed to an extent elsewhere unknown.

The user of electricity on tramways and light railways is governed by various provisions which are commonly inserted in Provisional Orders, Light Railway Orders, and special Acts, to regulate the

Sect. 55. construction of the necessary works, to prevent interference with the apparatus of other persons by electrolysis or otherwise, and to protect the promoters from liability if they take such reasonable precautions as are prescribed, and to limit actions (*post*, pp. 434-5, 571, 616); to protect the Postmaster-General (*post*, pp. 436, 571, 618), and to enable road authorities or the Board of Trade, as the case may be, to control the position and construction of standards and brackets (*post*, p. 599). Power is also given to the Board of Trade to consent to the use of, and approve the system of, electric traction (*post*, pp. 432, 569, 614), and to make by-laws and regulations for the conduct of such traction and the protection of the public (*post*, pp. 433, 614).

The Board of Trade's regulations and by-laws as to mechanical power in general, as to electric power, and as to the overhead trolley, surface-contact and conduit systems will be found *post*, pp. 352 *sqq.*

As to the protection afforded to promoters against liability for injury due to their user of electricity by their possession of statutory powers which authorise them to use it, the general principles already discussed will apply, with this qualification, namely that the user of electricity at a high voltage must be considered as dangerous, and consequently the promoters are under a general duty to protect others from the consequences of their user. The principles laid down above under head (iii.) on p. 232, will apply to this matter.

English authority on the subject is practically confined to two decisions. Neither of these is completely satisfactory for our present purpose, as in the one case the judgment was ultimately based on the protection afforded to the promoters by their statutory powers (this aspect of the case has already been dealt with), while in the other the course of action arose outside England, and the decision involved questions of Roman-Dutch law.

In *National Telephone Co. v. Baker*, [1893] 2 Ch. 186; 62 L. J. Ch. 499, a tramway (represented by the defendant) was worked on the overhead trolley system. The current, after traversing the trolley-wire and the car, returned by the rails and an uninsulated copper conductor running under the roadway parallel to the rails and connected with each rail. The telephones of the plaintiff company were worked on the single wire system with an earth return. The result was that the earthed electricity from the tramway rendered the telephones practically useless, and the plaintiff company claimed an injunction to restrain the defendant from using tramways so as to be a nuisance to or interfere with their telephones. The decision of Kekewich, J., included the following points:—

(i.) The principle of *Fletcher v. Rylands* (1868), L. R. 1 Ex. 265; L. R. 3 H. L. 330; 35 L. J. Ex. 154; 37 L. J. Ex. 161, applies to the case where a person creates an electric current for his own purposes and discharges it into the earth beyond his control. That principle was described by Blackburn, J., in his judgment as

follows: "The person who for his own purposes brings on his lands and collects there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by shewing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of *vis major*, or the act of God." The above was termed in the House of Lords a "non-natural use" of the land. It will be observed that it is a very considerable extension of the doctrine to transfer it from a non-natural use of land which injuriously affects a neighbouring landowner to the manipulation of electricity along a wire which injuriously affects the owner of an adjacent wire. This latter is a very broad application of the maxim, "*Sic utere tuo ut alienum non laedas.*"

(ii.) *Fletcher v. Rylands, ub. sup.*, applies to the fullest extent, even though the injury to the plaintiff is caused entirely or in part by the fact that the plaintiff's user of his property, like that of the defendant, is non-natural. The learned judge was aware of no principle or authority in English law to the contrary. But attention may be drawn to *Robinson v. Kilvert* (1889), 41 Ch. D. 88; 58 L. J. Ch. 392 (C. A.) (by way of analogy only), and to Blackburn, J.'s, own words in *Fletcher v. Rylands*, whereby he makes the defendant liable only for the damage which is the "natural consequence" of the escape. This would not, it seems, extend to damage caused to someone whose user of his property is, *ex hypothesi*, non-natural.

(iii.) Though it might be that the plaintiff company could have prevented the damage by the use of a particular appliance, the Court could not say that it was their duty to change their methods, which were lawful as they stood, in order to protect the defendant from the consequences of his default. The judge here, it may be respectfully pointed out, seems to have relied too much on the analogy of a plaintiff who was using his property naturally. Why should not non-natural user of property preclude its owner from complaining of interference with such user unless he has adopted proper methods to protect it as far as possible? If, for instance, a person kept high explosives on his property and they exploded, without any fault or negligence on the owner's part, and if, owing to the proper precautions taken by the owner, the concussion inflicted no injury whatever on the adjacent owners, but was sufficient to explode high explosives kept by another person on an adjacent property, it would seem to be contrary to justice that the former should pay for the damage caused to the latter, in so far as such damage was increased by the latter's non-natural user of his property.

In *Eastern and South African Telegraph Co., Ltd. v. Cape Town Tramways Companies, Ltd.*, [1902] A. C. 381; 71 L. J. P. C. 122,

Sect. 55. the second and third, and to some extent the first, of the propositions above mentioned were practically disapproved of.

In this case the method on which the tramway was worked may be taken, for the present purpose, to have been the same as that employed by the tramway company in the case last cited. The plaintiffs in this case were the owners of a submarine cable connected with land wires; the injury caused by the tramways to the cable was at least as substantial as that disclosed in the last-cited case, and the relief prayed by the plaintiffs was similar. Part of the tramway was worked without statutory power, and therefore the Court had to decide the question raised in part without any reference to the protection afforded by statute.

The Judicial Committee held that the principle of *Fletcher v. Rylands* would apply to such a case, if there were such resulting injury as is postulated by that principle. They pointed out that there was no injury of the same genus or species with the tangible and sensible injuries, which had up to that time founded liability by virtue of the principle; and that such injuries had always consisted of some interference with the ordinary use of property. They continued: "The appellants cannot claim higher privileges than other owners of land, and cannot create for themselves, by reason of the peculiarity of their trade apparatus, a higher right to limit the operations of their neighbours than belongs to ordinary owners of land who do not trade with telegraph cables. If the apparatus of such concerns requires special protection against the operations of their neighbours, that must be found in legislation; the remedy at present invoked is an appeal to a common law principle which applies to much more usual and less special conditions. A man cannot increase the liabilities of his neighbour by applying his own property to special uses, whether for business or pleasure. The principle of *Rylands v. Fletcher*, which subjects to a high liability the owner who uses his property for purposes other than those which are natural, would become doubly penal if it implied a liability created and measured by the non-natural uses of his neighbour's property."

The result, then, seems to be that, while the principle of *Fletcher v. Rylands* logically applies to such a case of interference as we have been considering, the measure of damages is not the damage which the plaintiff has actually suffered, but the damage which he would have suffered, had his user of his property been natural, that is to say, for practical purposes, nil.

Incidentally the Judicial Committee corrected another point suggested by Kekewich, J.—that *Fletcher v. Rylands* was not accepted in Scotland. They stated that the law of Scotland had adopted the principle even before *Fletcher v. Rylands* was decided.

AMERICAN AND CANADIAN CASES.

(a) *Electric Interference*.—*Cumberland Telephone and Telegraph Co. v. United Electric Railway Co.* (1890, U. S. C. C. Tenn.), 42 Fed. Rep. 273, was discussed by Kekewich, J., in *National Telephone Co. v. Baker*. He did not accept the decision, because the principle of *Fletcher v. Rylands* was not fully adopted in the case (see at pp. 279—280). But if *Fletcher v. Rylands* is only applied in cases of electric interference to the very modified extent to which the Judicial Committee was prepared to apply it, then the American decision now under discussion has a nearer application to English cases than Kekewich, J., was prepared to admit.

It was held that a telephone company could not restrain an electric railway company, where the escape of electricity from the latter's wires was incidental to the conduct of their business, and where the telephone company could protect itself at much less expense than would be incurred by the railway company in preventing the escape of electricity. The substance of the American decisions was stated to be: "Where a person is making lawful use of his own property, or of a public franchise, in such a manner as to occasion injury to another, the question of his liability will depend upon the fact, whether he has made use of the means which, in the progress of science and improvement, have been shewn by experience to be the best; but he is not bound to experiment with inventions, not generally known, or to adopt expensive devices, when it lies in the power of the person injured to make use himself of an effective and inexpensive method of prevention. . . . Unless we are to hold that the telephone company has a monopoly of the use of the earth, and of all the earth within the city of Nashville, for its feeble current, not only as against the defendants, but as against all forms of electrical energy which, in the progress of science and invention, may hereafter require its use, we do not see how this bill can be maintained."

Hudson River Telephone Co. v. Waterriet Turnpike and Railroad Co. (1890), 121 N. Y. 397 (as to an injunction), on appeal (1892), 135 N. Y. 393, was a similar decision on similar facts. But compare the later case of *Cumberland Telephone and Telegraph Co. v. United Electric Railway Co.* (1895), 93 Tenn. 492. See also *Cincinnati Inclined Plane Railroad Co. v. City and Suburban Telegraph Association*, 48 Ohio St. R. 390; and *Central Pennsylvania Telephone Co. v. Wilkesbarre, &c. Railroad Co.* (1892), 6 Kulp. 383; 1 Pa. Dist. R. 628. In this last case it was held that the street railroad company was bound to use all known and recognised appliances to protect the telephone company; compare *State of Wisconsin Telephone Co. v. Janesville Street Railroad Co.* (1894, Wis.), 57 N. W. Rep. 970. Similarly it has been

Sect. 55. held in Canada that, a telephone company having no vested interest in or exclusive right to the use of the earth circuit as against a street railway company incorporated by statute, the former could not recover by way of damages the cost of adopting the McClure system, which was necessary to put an end to interference with their wires by the latter's electricity. (*Bell Telephone Co. v. Montreal Street Railway Co.* (1897), Quebec Rapp. Jud. 6 B. R. 223 (C. A.).)

(b) *Care required from owners of electric apparatus.*—Such care should be in proportion to the dangers, which it is their duty to avoid (*Economy Light and Power Co. v. Stephen* (1900), 87 Ill. App. 220; *Alton Railroad and Illumination Co. v. Foulds*, 81 Ill. App. 322; *Larson v. Central Railroad Co.*, 56 Ill. App. 263), although they are not bound to have perfect apparatus or construction. (*Perham v. Portland General Electric Co.* (1898), 33 Or. 451; 72 Am. St. R. 730.) In particular they are bound to provide against the dangers caused by their erection of poles in the streets, and to maintain such poles properly, but are not liable for subsequent defects which inspection would not reveal. (*City of Denver v. Sherrett* (1898, U. S. C. C. Colo.), 88 Fed. Rep. 226; 60 U. S. App. 104; *Ward v. Atlantic and Pacific Telegraph Co.* (1877), 71 N. Y. 81; 27 Am. R. 10.) They are bound, in placing a pole near existing electric apparatus, to take due measures to avoid contact and to inspect from time to time, in order to keep their apparatus in suitable condition with reference to the previously existing apparatus. (*Dwyer v. Buffalo General Electric Co.*, 46 N. Y. S. 874; 20 App. Div. 124.)

Generally, the grant of the privilege to encumber the highway with dangerous electric apparatus imposes a duty not to injure persons lawfully on the highway, and to make the highway substantially as safe for them as it was before (*Western Union Telegraph Co. v. State* (1896), 82 Md. 293), and also to consider the safety of persons, such as workmen, whose employment will naturally bring them into proximity with such apparatus. (*Wagner v. Brooklyn Heights Railroad Co.* (1902), 74 N. Y. S. 809; 69 App. Div. 349.) A storm, which is the immediate cause of the accident, is no excuse where there is such want of care (*Paine v. Electric Illuminating and Power Co. of Long Island City* (1901), 72 N. Y. S. 279; 64 App. Div. 477), but it may be, where there has been reasonable care and the storm is an extraordinary one. (*Boyd v. Portland Electric Co.* (1901, Or.), 66 Pac. Rep. 576.)

(c) *Negligence.*—Negligence may be presumed, where an electric wire, which was normally suspended on poles along the street, was trailing on the sidewalk (*Ruddy v. Newark Electric Light and Power Co.* (1899), 46 Atl. Rep. 110; 63 N. J. Law 357), and where such a wire caused an injury, though just before the injury it had been attached to a tree by a boy, if it was in a sufficiently

dangerous position to have caused the injury without the intervention of the boy (*District of Columbia v. Dempsey* (1899), 27 Wash. L. R. 87; 13 App. D. C. 533), and where a passenger on a car is injured by the breaking of a trolley pole (*Keator v. Scranton Traction Co.* (1899), 191 Pa. 102), or by escaping electricity. (*Eiekhof v. Chicago North Shore Street Railway Co.*, 77 Ill. App. 196; *Buckbee v. Third Avenue Railroad Co.* (1901), 72 N. Y. S. 217; 64 App. Div. 360.)

Where one defendant's wire carrying a dangerous current crossed the other defendant's wire carrying a harmless current, and there were no guards between, it was held that both defendants might be found guilty of negligence, where an accident occurred owing to a contact of the wires. (*Rowe v. N. Y. and N. J. Telegraph Co.* (1901, N. J.), 48 Atl. Rep. 523; *United Electric Railroad Co. v. Shelton* 1891), 89 Tenn. 423.)

Secus, where the contact was caused by the fault of the owners of the dangerous wire owing to the slipping of the trolley pole of one of their cars (*Morgan v. Bell Telephone Co. of Canada* (1896), Quebec Rapp. Jud. 11 C. S. 103 (C. A.)), or where it was due to the fault of the owners of the harmless wire in suffering it to get out of repair. (*Western Union Telegraph Co. v. Thorn* (1894, U. S. C. C., N. J.), 64 Fed. Rep. 287.)

(d) *Contributory Negligence*.—A company was held not to be liable, when its guard-wire had become charged and injured a boy who was walking on the girder of a bridge, where he had no business to be, although it was the custom of boys so to walk. (*Freeman v. Brooklyn Heights Railroad Co.* (1900), 66 N. Y. S. 1052; 54 App. Div. 596.)

Secus, where the person injured was under duty to be where he was (*Perham v. Portland General Electric Co.* (1898), 33 Or. 451; 72 Am. St. R. 730; *Hector v. Boston Electric Light Co.* (1899), 174 Mass. 212; but see *Will v. Edison Electric Illuminating Co.* (1901), 200 Pa. 540; or where a wire was dangerously near a public passage, though the injury was caused by an unusual act on the part of a passer-by. (*Wittleder v. Citizens' Illuminating Co. of Brooklyn* (1900), 62 N. Y. S. 297; 47 App. Div. 410.)

For contributory negligence in touching electric wires, see *Wood v. Diamond Electric Co.* (1898), 185 Pa. 529; *Illingsworth v. Boston Electric Light Co.* (1894), 161 Mass. 583; *Griffin v. United Electric Light Co.* (1896), 164 Mass. 492; 49 Am. St. R. 477; *Ennis v. Gray* (1895), 87 Hun 355; 34 N. Y. S. 379. Where a person was killed in trying to remove a broken wire, which had been left for a long time by its owners, though dangerously charged, the owners were held liable, though the imprudence of the deceased led to a reduction of the damages. (*Caron v. Cité de St. Henri* (1896), Quebec Rapp. Jud. 9 C. S. 490.)

Sect. 55.

But a person working near electric wires may, it seems, presume that they are properly insulated, unless the defect is visible to such examination as he ought to make. (*Will v. Edison Electric Illuminating Co.* (1901), 200 Pa. 540.)

LIABILITY OF PROMOTERS AND LESSEES IN RESPECT OF CARRIAGES.

A. Liability of Promoters or Lessees for the wrongful acts of their Officers and Servants.

It will be most useful for the purpose of this work to state quite generally and briefly the law governing the liability of a master for the wrongful acts of his servant, and then illustrate the various points as far as possible by the numerous cases which have dealt with them in particular relation to tramways. The special question of false imprisonment and malicious prosecution has already been discussed in note (s) to sect. 52.

1. *Civil Liability.*

A master is civilly liable for the wrongful acts of his servant, if they are done within the scope of the servant's employment, for in that case the servant is taken to have implied authority to do the acts. If an act is within the scope of a servant's employment, it does not matter that the manner of the servant's action was outrageous (*Seymour v. Greenwood* (1861), 6 H. & N. 359; 7 H. & N. 355 (Ex. Ch.); 30 L. J. Ex. 189, 327); or negligent, stupid, or blundering (*Bayley v. Manchester, Sheffield and Lincolnshire Railway Co.* (1873), L. R. 7 C. P. 415; L. R. 8 C. P. 148; 42 L. J. C. P. 78); or contrary to the master's orders, for it is the duty of the master to see that his orders are obeyed. (*Betts v. De Vitre* (1868), L. R. 3 Ch. 441; 37 L. J. Ch. 325.) We must, of course, distinguish between breach of orders which limit the scope of the employment, and breach of orders which regulate conduct within the scope of the employment. (Compare *Whitehead v. Reader*, [1901] 2 K. B. 48; 70 L. J. K. B. 546 (C. A).)

Another aspect of the same principle is the rule that the act must not be done for the caprice or the interest of the servant himself, but for the master's benefit. (*Huzzev v. Field* (1835), 2 C. M. & R. 432, 440; 4 L. J. Ex. 239, 242; *Bayley v. Manchester, Sheffield and Lincolnshire Railway Co.*, *ub. sup.* (per Willes, J.); *Croft v. Alison* (1821), 4 B. & A. 590; *Joel v. Morison* (1834), 6 C. & P. 501.)

Where a servant's act is both tortious and criminal, a master is not relieved from liability by the criminal punishment of the servant. (*Dyer v. Munday*, [1895] 1 Q. B. 742; 64 L. J. Q. B. 448 (C. A).) The master may, however, set up, in an action brought against him for injury alleged to be due to the negligence of his servant, the defence that the plaintiff was guilty of contributory negligence. The rules as to this are as follows: (i.) The plaintiff

in an action for negligence cannot succeed, if it is found by the jury that he has himself been guilty of any negligence or want of care which contributed to cause the accident. (*Railley v. London and North Western Railway Co.* (1876), 1 A. C. 754, 759; 46 L. J. Ex. 573.) (ii.) Though the plaintiff may have been guilty of negligence, and though that negligence may in fact have contributed to the accident, yet if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him (*Id. ib.*). (Compare *Abraham v. North Metropolitan Tramways Co.* (1894), "Times" Newspaper, Mar. 22.) (iii.) Although there may have been negligence on the part of the plaintiff, yet, unless he might by the exercise of ordinary care have avoided the consequences of the defendant's negligence, he is entitled to recover; if by ordinary care he might have avoided them, he is the author of his own wrong. (*Bridge v. Grand Junction Railway Co.* (1838), 3 M. & W. 244.) (iv.) "Contributory negligence" is not quite a happy phrase. The plaintiff's negligence must be the *causa efficiens*, and not merely the cause without which the injury would not have been sustained. (*Delany v. Dublin United Tramways Co., Ltd.* (1892), 30 L. R. I. 725, 738, where the authorities are collected.) (v.) If the negligence of either party has put the other party into a position of emergency, negligence will not be lightly imputed to that other party, although he may do something which under circumstances of less danger and difficulty might amount to negligence. (*Jones v. Boyce* (1816), 1 Stark. N.P. 493; *The Bywell Castle* (1879), 4 P. D. 219 (C. A.); *Reynolds v. Thomas Tilling, Ltd.* (1903), 19 T. L. R. 539.)

2. Criminal Liability.

A master may be criminally liable for the criminal act of his servant, where he expressly, or by clear implication, orders the act (*Roberts v. Woodward* (1890), 25 Q. B. D. 412; 59 L. J. M. C. 129), or allows the act to be done knowingly, and when he might have prevented it (*Howells v. Wynne* (1863), 15 C. B. (N. S.) 3; 32 L. J. M. C. 241); but not where he employs the servant to do a legal act, and the servant does an illegal act, or does the legal act in an illegal way. (*Cooper v. Slade* (1858), 6 H. L. C. (10 E. R.) 746, 793; 27 L. J. Q. B. 449, 464, per Lord Wensleydale.) Otherwise the master is only liable criminally for the acts of his servant in the classes of cases enumerated in *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; 64 L. J. M. C. 218 (see note (y) to sect. 53), viz., cases where, though the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right, cases of public nuisances (*R. v. Stephens* (1866), L. R. 1 Q. B. 702; 35 L. J. Q. B. 251), and cases relating to acts which, in the public interest, are prohibited under a penalty, whether such acts be prohibited by an Act (*Commissioners of Police v. Cartman*, [1896] 1 Q. B. 655; 65 L. J. M. C.

Sect. 55. 113) or by a by-law. (*Collman v. Mills*, [1897] 1 Q. B. 396; 66 L. J. Q. B. 170.)

3. Ratification.

All questions of the scope of a servant's authority to do the act which resulted in a tort are subject to the possibility that the act, though at first unauthorised, may have been adopted and ratified by the master. "He that receiveth a trespasser and agreeth to a trespass after it is done is no trespasser, unless the trespass was done to his use or for his benefit, and then his agreement subsequent amounteth to a commandment, for in that case *omnis ratio habitio retrotrahitur et mandato equiparatur*" (4 Inst. 317).

The conditions which must be satisfied to constitute a proper ratification are set out in *Marsh v. Joseph*, [1897] 1 Ch. 213, 246—7; 66 L. J. Ch. 128, 135 (C. A.). They are—(i.) The act must have been done for and in the name of the master; (ii.) there must be full knowledge of what the act was, or such an unqualified adoption that the inference may properly be drawn that the master intended to take upon himself the responsibility for the act, whatever it was and however culpable it was. It would be enough, however, if it were found as a fact that the master chose without inquiry to adopt the act at his own risk. (*Lewis v. Read* (1845), 13 M. & W. 834; 14 L. J. Ex. 295.)

4. Liability of Corporations and Public Authorities.

A corporation aggregate may be liable for intentional acts of misfeasance by its servants, provided they are sufficiently connected with the scope and object of its incorporation. (*Green v. London General Omnibus Co., Ltd.* (1859), 7 C. B. (N. S.) 290; 29 L. J. C. P. 13.) The same principle applies to a quasi-public corporation, whose revenues are not applicable to the use of the corporation or the corporators, but to the maintenance of their authorised works. (*Mersey Docks and Harbour Board Trustees v. Gibbs* (1864), L. R. 1 H. L. 93; 35 L. J. Ex. 225; compare *Parnaby v. Lancaster Canal Co.* (1839), 11 A. & E. 223; 9 L. J. Ex. 338.) As to the liability of the funds of all the undertakings of promoters, where they possess more than one, to claims in respect of torts, see note (o) to sect. 43.

Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), provides that "any action, prosecution or other proceeding commenced in the United Kingdom against any person for any act done in pursuance, or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority," shall be brought within six months as therein provided, and that the defendant, if successful, shall have costs as between solicitor and client. The Act does not apply to proceedings arising under an Act which applies to Scotland only, and contains a limitation of the time and other conditions for the proceedings.

The words of the Act are wide enough to cover any action arising out of an act or default connected with the exercise of statutory powers (other than appeals and interlocutory proceedings (*Fielding (or Fielden) v. Morley Corporation*, [1899] 1 Ch. 1; 67 L. J. Ch. 611 (C. A.)); it includes, for instance, actions for an injunction, or actions partly for an injunction or partly for damages. (*Harrop v. Ossett Corporation*, [1898] 1 Ch. 525; 67 L. J. Ch. 317.) But the Act, in spite of its unfortunate wording, has been held not to extend to proceedings against a company with statutory powers, which exists not only for the public benefit, but also for the purpose of earning profits for itself, if it can. (*Attorney-General v. Margate Pier and Harbour Co.*, [1900] 1 Ch. 749; 69 L. J. Ch. 331.) Kekewich, J., in that case instances a tramway company as such a company.

It will, however, extend to proceedings against a local authority in respect of a trade or business carried on by it by virtue of statutory powers. If Parliament "confers on a municipality the right and duty to assume the functions of a trader, it clothes those functions with a public character, and makes them just as much public duties of a public authority as those for the performance of which that authority was created." (*The Idun*, [1899] P. 236, 240, per Jeune, P.) The facts of that case did not require a judgment of so wide a scope as that cited above, and the Court of Appeal affirmed the decision on somewhat narrower grounds. But the principle laid down by Jeune, P., may now be taken to have been settled by *Chamberlain and Hookham, Ltd. v. Bradford Corporation* (1900), 83 L. T. 518, and *Jeremiah Ambler and Sons, Ltd. v. Bradford Corporation*, [1902] 2 Ch. 585; 71 L. J. Ch. 744 (C. A.). Both these actions were brought against a local authority in respect of matters not specifically authorised by a duly confirmed electric lighting order, but arising out of the exercise of the powers conferred thereby.

The Act has, in fact, been applied in proceedings against a local authority in respect of tramways worked by it (*North Metropolitan Tramways Co. v. London County Council*, [1898] 2 Ch. 145; 67 L. J. Ch. 449), where the claim was for an injunction and damages for trespass, and in *A.-G. v. Bournemouth Corporation*, [1902] 2 Ch. 714, 722; 71 L. J. Ch. 730. It would also apply, presumably, where light railways were constructed or worked by a local authority.

Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), ss. 25, 26, apply (by sect. 1) to tramways, whether worked by steam or otherwise. They provide for the appointment by the Board of Trade of an arbitrator to determine the compensation for an accident on the joint application of the parties, and for the appointment by the judge or arbitrator of a duly qualified medical practitioner, who is not a witness on either side, to examine the injured person, with discretion as to the costs of the examination.

Sect. 55. It now remains to illustrate the principles of liability as far as possible by reference to tramway and omnibus cases.

I. *Scope of Employment.*

(a) The acts of a servant have been held to be within the scope of his employment in the following cases:—

Where a driver of an omnibus negligently and improperly drove it in front of a rival omnibus and overturned the latter, though he had received instructions from his master not to obstruct any omnibus—on the ground that he was employed not only to drive an omnibus, but also to compete with rival omnibuses. (*Limpus v. London General Omnibus Co.* (1862), 1 H. & C. 526; 32 L. J. Ex. 34. Compare *Hamlyn v. John Houston & Co.*, [1903] 1 K. B. 81; 72 L. J. K. B. 72 (C. A.).)

Where a conductor, who was collecting fares in the ordinary course of his duty under the by-laws, negligently and improperly pushed off a tramcar a passenger who had asked him to wait a minute for his fare. (*Smith v. North Metropolitan Tramways Co.* (1891), 55 J. P. 630 (C. A.).)

Where a conductor had a passenger arrested for a supposed attempt to pay a fare with false coin. (*Furlong v. South London Tramways Co.* (1884), C. & E. 316; 48 J. P. 329, now apparently no longer law, see note (s) to sect. 52.)

Where two servants of a tramway company indulged in a race on two horses of the company which they were taking to be shod—on the ground that this was merely a grossly negligent method of discharging their duty, the primary purpose of their ride being their employers' benefit, their own amusement merely secondary. (*Gracey v. Belfast Tramway Co.*, [1901] 2 I. R. 322, affirming 34 Ir. L. T. R. 73.)

Where an omnibus driver injured a passenger with his whip, while endeavouring to hit the conductor of another omnibus who had boarded his own, it was held to be for the jury to say whether his action was due to personal spite or to a supposed attempt to further his employers' interests. (*Ward v. General Omnibus Co.* (1873), 42 L. J. C. P. 265.)

One may be permitted to express one's surprise at several of the above decisions.

(b) The following acts have been held not to be within the scope of a servant's employment:—

Where a conductor gave a passenger into custody for a supposed tender of a false coin in payment of his fare. (*Charleston v. London Tramways Co.* (1888), 36 W. R. 367; 4 T. L. R. 157; 32 So. J. 557; 4 T. L. R. 629 (C. A.); *Knight v. North Metropolitan Tramways Co.* (1898), 78 L. T. 227; 42 So. J. 345; 14 T. L. R. 286, for which cases and others see note (s) to sect. 52.)

Where a driver was alleged to have twisted his whip round the neck of a boy, who had been invited by a trace-boy to go on to the driver's platform of the car, and so hoisted him off the platform, a proof before answer was allowed, and the Court expressed the view that if such an act were proved it would be outside the scope of the driver's employment. (*M'Graw v. Edinburgh Street Tramways Co.* (1891), 28 S. L. R. 256.)

Where a driver himself invited a girl to come on to his platform, contrary to a by-law of the company, then later on told her to get off, but refused to stop the car for the purpose, and she was injured. (*Docherty v. Glasgow Tramway and Omnibus Co., Ltd.* (1894), 32 S. L. R. 353.)

Where passengers were forbidden by a notice posted up in a car to ride on the front platform, and instructions were given to the same effect to the company's servants, but a passenger did so ride and was injured by the negligence of the company's servants. (*Byrne v. Londonderry Tramway Co.*, [1902] 2 I. R. 457 (C. A.).)

Where a conductor, in the absence of the driver, drove an omnibus, apparently for the purpose of bringing it into position for the next journey. (*Beard v. London General Omnibus Co.*, [1900] 2 Q. B. 530; 69 L. J. Q. B. 895 (C. A.).)

Where a conductor threw a passenger, who refused to leave, off an omnibus, an issue was allowed containing an averment by the pursuer that this was the conductor's method, adopted in the course of his employment, for removing obstinate passengers from the omnibus. (*Bryce v. Glasgow Tramway Co.* (1898), 6 S. L. T. 68.)

II. Negligence.

In the following cases a servant has been held to be negligent (compare also the cases below on "Contributory Negligence") :—

Where the driver ought to have stopped a steam car when the driver of a cart shouted to him to do so, but did not. (*Commissioner for Railways v. Toohey* (1884), 9 A. C. 720; 53 L. J. P. C. 91.)

Where a steam car was coming down an incline, and the driver of a restive pony held up her whip as a signal to the driver to stop, but he did not. This was also held to be contrary to the Board of Trade's by-law No. III. (see *post*, p. 354). (*Downing v. Birmingham and Midland Trams* (1888), 5 T. L. R. 40.)

Contrast *Jolly v. North Staffordshire Tramway Co.* (1887), "Times" Newspaper, July 27, where it was held on the facts that the driver of the steam car could not have foreseen what occurred, and that there was no negligence.

Where the plaintiff was meeting a tramcar with a horse and trap clear of the tram-line, and, his horse being restive, held up his hand and shouted to the driver of the car to stop till he could pass, but the driver paid no attention, and the horse swerved into the car, to the plaintiff's injury. The Court pointed out that the company's

Sect. 55. statutory powers did not exempt their servants from the common law obligation to take reasonable care not to injure persons lawfully using the highway. (*Rattee v. Norwich Electric Tramway Co.* (1902), 18 T. L. R. 562 (C. A.).)

Where a driver saw a cab standing on the track when he was coming down a steep and narrow street, but merely whistled and did not stop. (*McDermaid v. Edinburgh Street Tramways Co., Ltd.* (1884), 12 R. 15.)

Where a driver left a steam tram engine for a time and the conductor started it, and, being unable to stop it again, caused injury. (*Jenkinson v. Rossendale Valley Trams Co., Ltd.* (1890), "Times" Newspaper, Feb. 13, Ap. 24 (C. A.).)

Where there was a large crowd, and a tramcar, the track being close to the pavement, was not driven with sufficient care. (*Martin v. North Metropolitan Tramways Co.* (1887), 3 T. L. R. 600 (C. A.); compare *Edwards v. Birmingham Central Tramway Co.* (1892), "Times" Newspaper, Nov. 9.)

Where an omnibus was driven so close to the pavement that the box of the wheel overhung it and caused injury. (*Burrows v. London General Omnibus Co.* (1894), 10 T. L. R. 298.)

Where the conductor rang the bell to stop the car and then went away; the car did not stop, and the plaintiff rang the bell again and then went to the step, whence he was thrown by a jerk. (*Hall v. London Tramways Co.* (1896), 12 T. L. R. 611, overruling *Baird v. South London Tramways Co.* (1886), 2 T. L. R. 756.)

Compare *Stewart v. Glasgow Tramway and Omnibus Co., Ltd.*, *infra*, under "Contributory Negligence."

Where a passenger, who had deposited her basket on the front platform, according to the practice of the company, was injured by the starting of the car as she was reaching to take it off. (*Greig v. Aberdeen District Tramways Co.* (1890), 17 R. 808.)

Where a car was overcrowded, and the conductor allowed an obviously drunken man to mount it, who managed to clutch a woman and child and pull them off the car, to their respective damage and death. (*Murgatroyd v. Blackburn and Over Darwen Tramway Co.* (1887), 3 T. L. R. 451.)

III. *Contributory Negligence.*

(a) In the following cases the acts of the plaintiff have been held to amount to contributory negligence:—

Where the plaintiff was drunk, and tried to mount a moving tramcar, although the conductor, in keeping him off, displayed a very considerable lack of care and skill, to use no harsher expression. (*Delany v. Dublin United Tramways Co., Ltd.* (1892), 30 L. R. I. 725 (C. A.).)

Where the plaintiff boarded an omnibus while it was in motion, and was jerked off before he had seated himself. The jury found

this fact, and also that the defendants were guilty of negligence in not stopping to allow the plaintiff to get up. It was held, that the non-stopping of the omnibus did not cause the damage, and that the plaintiff, by boarding the omnibus while it was in motion, took upon himself the ordinary risks of doing so. (*Lill v. London General Omnibus Co.* (1899), "Times" Newspaper, Jan. 26, 31; Ap. 13 (C. A.).)

Where the conductor, at the request of the plaintiff, rang the bell, the car slowed down, and the plaintiff, who was lame, went to the step; then, thinking he was being carried past his destination, the plaintiff rang the bell again, and the driver, thinking it a signal to proceed, quickened speed, and the plaintiff was thrown off. (*Stewart v. Glasgow Tramway and Omnibus Co., Ltd.* (1883), 21 S. L. R. 47.)

Contrast *Hall v. London Tramways Co., Ltd.*, *infra*.

Where a child of $5\frac{1}{2}$ years rashly attempted to cross in front of a tramcar, which was found to have been travelling at more than the permitted rate of speed. (*Frasers v. Edinburgh Street Tramways Co.* (1882), 10 R. 264.)

This case agrees with *Thompson v. Buffalo Railway Co.* (1895), 145 N. Y. 176; but see *contra*, *Cray v. Metropolitan Tramways Co., Ltd.* (1873), "Times" Newspaper, June 21.

As to the duty of persons dismounting from a tramcar to look out for cars coming in the opposite direction, see *Buzby v. Philadelphia Traction Co.* (1889), 126 Pa. 559.

(b) The acts of the plaintiff have been held not to amount to contributory negligence:—

Where the plaintiff, while in the act of mounting an omnibus, told the conductor he might start; the omnibus started with a jerk and he was thrown off. The Court pointed out that a direction that the plaintiff was entitled to damages, unless the injury was entirely due to his contributory negligence, was wrong, but gave judgment for the plaintiff on the grounds (i) that the conductor was negligent in starting the omnibus, even though the plaintiff consented; (ii) that the plaintiff consented to the starting of the omnibus merely, and not to its starting with a jerk. (*Geeves v. London General Omnibus Co., Ltd.* (1901), 17 T. L. R. 249 (C. A.).)

Where an intoxicated man was boarding a car and was run over by a car coming in the opposite direction—on the ground that it was not shown that the accident could not have been avoided by due diligence on the part of the defendants, nor that the plaintiff's negligence was the proximate cause of the accident. (*Norwood v. Toronto Corporation*, 13 Can. L. T. 225.)

Where the plaintiff went and stood on the step to wait until the car stopped, and was thrown off by a jerk. (*Hall v. London Tramways Co., Ltd.* (1896), 12 T. L. R. 611; overruling *Baird v. South London Tramways Co.* (1886), 2 T. L. R. 756.) Compare *Krauth v. City of Birmingham Tramways Co.* (1902), "Times"

Sect. 55. Newspaper, Aug. 4; and contrast *Stewart v. Glasgow Tramway and Omnibus Co., Ltd.*, *supra*.

Where a passenger was injured in leaving a car by the front platform contrary to the company's by-laws, but it was proved that in practice passengers left the car as often by the front platform as by the back platform. (*Freel v. Bury* (1900), "Times" Newspaper, July 21; (1901), Jan. 26 (C. A.).)

Where a passenger stood on the top of a tramcar owing, as he alleged, to the company's neglect to keep the seats dry, contrary to the company's by-laws, it appearing that it was the practice of persons to stand on the cars, and that the servants of the company did not prevent it. (*Hughes v. Leeds Corporation* (1902), "Times" Newspaper, Aug. 4.)

Where the plaintiff was leaning out of the window of a car and was injured by an obstruction which the company had placed close to the track. (*Doyle v. Dublin Southern District Tramway Co.* (1897), 31 Ir. L. T. Newspaper, 120.)

Where the plaintiff stopped his cab on the tramway track for a lawful purpose, namely, to pick up a fare. (*McDermid v. Edinburgh Street Tramways Co., Ltd.* (1884), 12 R. 15.)

Where the plaintiff might have driven his cab out of the way in time, but the car was going downhill at an excessive rate, and it was the duty of the driver to exercise a very high degree of caution. (*Halifax Electric Tramway Co. v. Inglis* (1900), 30 Can. S. C. R. 256.)

IV. *Negligence of a third party.*

It is no longer the law, as laid down in *Thorogood v. Bryan* (1849), 8 C. B. 115; 18 L. J. C. P. 336, that a person by selecting a particular conveyance has so far identified himself with the owner thereof and his servants that, if any injury results from their negligence, he must be considered a party to it; and therefore in an action by an omnibus passenger against a tramway company, it was held to be no answer to say that there was negligence on the part of the driver of the omnibus. (*Mathews v. London Street Tramways Co.* (1888), 58 L. J. Q. B. 12, following *The Bernina* (1888), 13 A. C. 1; 57 L. J. P. 65.)

In *Batchelor v. London General Omnibus Co.* (1901), "Times" Newspaper, June 6, in an action by a passenger for injuries caused by an omnibus colliding with a standard belonging to a tramway company, the top of which consequently fell upon the plaintiff, the defence that the tramway company had negligently erected the standard was unsuccessfully raised.

A tramway company, on being sued for damages for a personal accident due to the collision of one of their tramcars with a coach, denied liability, and averred that the accident was solely due to the fault of the driver of the coach. The pursuer then raised a second action against the owner of the coach, who denied liability, and the actions were conjoined. The jury found the tramway company, but

not the owner of the coach, liable in damages. It was held that the tramway company might be made liable in expenses both to the pursuer and to the successful defender. *Quare* if this would have been so if the actions had not been conjoined. (*Thomson v. Edinburgh and District Tramways Co., Ltd.* (1901), 3 F. 355.)

Sect. 55.

V. Evidence, &c.

Where a plaintiff voluntarily submitted to be examined by the defendants' medical officer, who sent a report of the examination to the defendants' solicitors, the report was held to be privileged. (*Pacey v. London Tramways Co.* (1876), 2 Ex. D. 440 n.; 46 L. J. Ex. 698 n. (C. A.)) This case was followed in *Friend v. London, Chatham and Dover Railway Co.* (1877), 2 Ex. D. 437; 46 L. J. Ex. 696 (C. A.), and applied to a case where the examination was made not by consent but under an adverse order obtained by the defendants.

Semble, if a report were made by order under Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 26, it would not be privileged.

The daily reports of a tramway company's servants are not privileged. (*Cook v. North Metropolitan Tramways Co.* (1889), 6 T. L. R. 22.)

The criterion is whether the document was or was not prepared for the purpose of informing the solicitor of the party which obtained it, whether it has in fact been laid before him or not. (*Southwark and Vauxhall Water Co. v. Quick* (1878), 3 Q. B. D. 315; 47 L. J. Q. B. 258 (C. A.))

In *Apthorpe v. Edinburgh Street Tramways Co.* (1882), 10 R. 344, where the conductor, whose company was being sued, had made a report to the managing director on the matter in question, it was held, naturally enough, that the conductor could not be asked what opinion the managing director had expressed when he received the report.

As to interrogatories and production of documents in an action between rival tramway-car manufacturers, see *Attorney-General v. North Metropolitan Tramways Co.* (1895), 72 L. T. 340.

As to the jurisdiction of a County Court judge to hear a second application for a new trial based on a fresh ground, after dismissing a former application based on the ground that the verdict was against the weight of the evidence and on the ground of surprise, see *Moxon v. London Tramways Co.* or *R. v. Judge of Greenwich County Court* (1888), 57 L. J. Q. B. 446.

A new trial was ordered in *Evans v. South London Tramways Co.* (1894), 10 T. L. R. 312, where there had been a non-suit on the particulars of claim.

VI. Damages and Costs.

For an order for particulars of loss of business alleged to have been caused by a tramway accident, after defence had been delivered, see *Watson v. North Metropolitan Tramways Co.* (1886), 3 T. L. R. 273.

Sect. 55. A pursuer was found liable in the part of the expenses incurred between the date on which a tender was made and the date on which he accepted it, on the ground of his undue delay in accepting the tender. (*M'Laughlin v. Glasgow Tramway and Omnibus Co., Ltd.* (1897), 24 R. 992.)

Compare *Shaw v. Edinburgh and Glasgow Railway Co.* (1863), 2 M. 142.

Where a passenger, who had a right to be transferred, was refused a transfer by a conductor and was forced to leave a car, an illness caused by his exposure to the weather on so leaving was held to be not too remote to justify damages. (*Grinsted v. Toronto Railway Co.* (1894), 24 Ont. R. 683.)

The contrary view was taken under similar circumstances in *Hobbs v. London and South Western Railway Co.* (1875), L. R. 10 Q. B. 111; 44 L. J. Q. B. 49; but this case was adversely commented on in *M'Mahon v. Field* (1881), 7 Q. B. D. 591; 50 L. J. Q. B. 552 (C. A.).

Where a tramway company insured against accidents caused by their vehicles, a maximum sum of 250*l.* being paid for any one accident, it was held that one accident which caused injury to forty persons was to be reckoned for the purpose of the policy as forty accidents, and not as one accident. (*South Staffordshire Tramways Co. v. Sickness and Accident Assurance Association*, [1891] 1 Q. B. 402; 60 L. J. Q. B. 260 (C. A.).)

B. Liability of Promoters or Lessees to their Officers and Servants.

(a) *Under Employers' Liability Act, 1880* (43 & 44 Vict. c. 42).

This Act, among other things, deprives the employer of the defence of common employment in the cases in which it applies, though a workman can contract himself out of the benefit of the Act. (*Griffiths v. Earl of Dudley* (1882), 9 Q. B. D. 357; 51 L. J. Q. B. 543.) It applies (sect. 1) where personal injury is caused to a workman by reason of any defect in the condition of the ways, works, machinery or plant connected with or used in the business of the employer, or by reason of the negligence or acts of the persons therein mentioned, subject to the exceptions mentioned in sect. 2, which, amongst other things, provides that a rule or by-law approved by the Board of Trade shall not be deemed to be an improper or defective rule or by-law for the purposes of the Act.

"Workman" is defined (sect. 8) as "a railway servant and any person to whom the Employers and Workmen Act, 1875, applies." By sect. 10 of this latter Act (38 & 39 Vict. c. 90), "the expression 'workman' does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a

contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.”

Sect. 55.

That a tramway proper is not a “railway” so as to bring its servants under the Act as “railway servants,” seems to be fairly clear. In *Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357; 61 L. J. M. C. 124, Wills, J., remarked that, though the Legislature had never defined either tramway or railway, any ordinary person was able to distinguish between the two, and that the codes regulating them were substantially different. Compare also *Clogher Valley Tramway Co., Ltd. v. R.* (1892), 30 L. R. I. 316, and *In re Brentford and Isleworth Tramways Co.* (1884), 26 Ch. D. 527; 53 L. J. Ch. 624. The Legislature often distinguishes them, *e.g.*, in Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 147, and where “railway” is intended to include “tramway” it is so provided, *e.g.*, in Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 2. Thus, so far as an undertaking is, by its legal status, a “tramway,” it is not a “railway” within the Act in question, whatever mode of propulsion is employed on it. But *semble*, a light railway would be held to be a “railway” within the meaning of the Act. Compare Light Railway Act, 1896, s. 12 (2), whereby the general enactments relating to railways shall apply to light railways, subject to the provisions of the Act and Order; and for that purpose the light railway company shall be deemed a railway company. It might be suggested that where a light railway closely approximated to a tramway, and its Order only applied the ordinary railway Acts to a very modest extent, it might not be a railway within the meaning of the Act. But *quare* whether this would make any difference. See *Doughty v. Firbank* (1883), 10 Q. B. D. 358; 52 L. J. Q. B. 480, where it was held that “railway” must be taken in its ordinary popular meaning, and would include a private and temporary railway, to which the Regulation of Railways Acts did not apply; and *Brodie v. North British Railway Co.* (1900), 3 F. 75. Contrast Workmen’s Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7 (2).

Where, therefore, a system is in part tramway and in part light railway, we may have the absurd result that an employé injured on one piece of it is entitled to compensation under the Act, while an employé injured on an adjacent piece is not.

For it is held at present in England that a driver or conductor of a tramcar, and *semble* any other employé, who does not engage in manual labour in the strictest sense, cannot claim the benefit of the Act as a “workman.” It was so held with regard to the conductor of an omnibus in *Morgan v. London General Omnibus Co.* (1884), 13 Q. B. D. 832; 53 L. J. Q. B. 352 (C. A.), on the ground that “otherwise engaged in manual labour” must be construed as

Sect. 55. *ejusdem generis* with the preceding words, and that "manual labour" means "labour performed by hand," and in this the plaintiff was not engaged. This principle was applied in *Cook v. North Metropolitan Tramways Co.* (1887), 18 Q. B. D. 683; 56 L. J. Q. B. 309, to the driver of a tramcar. The Court distinguished between manual work and manual labour, and thought the driver was engaged in the former and not in the latter; it also drew a distinction between labour which is continuous and requires no application of thought, and labour which requires a certain amount of thought and skill. *Quere* whether these reasons and distinctions are any of them satisfactory. The Courts have followed the same line in reference to a railway guard (under the 1875 Act) (*Hunt v. Great Northern Railway Co.*, [1891] 1 Q. B. 601; 60 L. J. Q. B. 216), and a grocer's assistant. (*Bound v. Lawrence*, [1892] 1 Q. B. 226; 61 L. J. M. C. 21 (C. A.).) In Ireland even a hairdresser has been held not to be within the Act (*R. (Holywood) v. Louth Justices*, [1900] 2 I. R. 714), on the remarkable ground that he was not compelled to display sufficient physical energy to constitute his work "manual labour."

On the other hand the driver of a wharfinger's trolley, who had also to load and unload it, was held to be within the Act. (*Yarmouth v. France* (1887), 19 Q. B. D. 647; 57 L. J. Q. B. 7 (C. A.).)

In Scotland the opposite opinion has prevailed. In *Wilson v. Glasgow Tramways Co.* (1878), 5 R. 981, it was held that a tramway conductor was a "workman" within the Act of 1875, on the ground that he was a labourer employed to attend on the tramcars. This case was discussed in *Morgan v. London General Omnibus Co.*, *ub. sup.*, and the Court suggested that the decision might have been different if it had been given after the Act of 1880 had added "railway servants" to the list. In *Haston v. Edinburgh Street Tramways Co., Ltd.* (1887), 14 R. 621, compensation under the Act was awarded to a trace-boy employed by a tramway company. But see *McEwen v. Edinburgh and District Tramway Co.* (1899), 6 S. L. T. 479, for a discussion of the question of common employment in an action for personal injuries brought by a temporary trace-boy against a tramway company.

(b) *Under Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37).

This Act applies (sect. 7 (1)) to employment by the undertakers on or in or about a railway, factory, mine, quarry or engineering work, and on, in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water or other mechanical power is being used for the purpose of the construction, repair or demolition thereof.

"Railway" (sect. 7 (2)) means the railway of any railway company to which the Regulation of Railways Act, 1873 (36 & 37 Vict.

c. 48), applies (this Act, unlike the two previous Regulation of Railways Acts, does not apply to tramways however authorised), and includes a light railway under Light Railways Act, 1896, and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896. Sect. 55.

"Engineering work" (sect. 7 (2)) means any work of construction or alteration or repair of a "railroad" . . . and includes any other work for the construction, alteration or repair of which machinery driven by steam, water or other mechanical power is used.

Thus a light railway is specifically included in the Act, whatever its type, provided that it was made under Light Railways Act, 1896.

But a tramway, as such, is not within the Act. (*Holmes v. City of Birmingham Tramway Co.* (1902), 113 L. T. Newspaper, 197 (C. A.); compare *Fletcher v. London United Tramways, Ltd.*, *infra*.) The promoters or lessees would, however, be liable under the Act to compensate their workmen if they employed them as undertakers in any of the employments specified in sect. 7 (1). And in particular it has now been decided that the word "railroad" in sect. 7 (2), unlike "railway," includes tramway (*Fletcher v. London United Tramways, Ltd.*, [1902] 2 K. B. 269; 71 L. J. K. B. 653 (C. A.)), and therefore employment on the construction, alteration or repair of a tramway is an employment to which the Act applies, whether mechanical power be used in the work or not. Note, that in Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16, though this was not brought to the attention of the Court in the last-cited case, "railroad" is expressed to include any tramway, whether worked by animal or mechanical power.

Thus, as far as mere employment in, on or about a tramway or light railway is concerned, we may arrive at the same absurd result as under Employers' Liability Act, 1880, where a system is continuous and consists in part of tramway and in part of light railway. An accident might well begin on the tramway portion and end on the light railway portion, if the workman was dragged along by a car, and an interesting question of law would then arise. Compare *Bathgate v. Caledonian Railway Co.* (1902), 4 F. 313, where an accident began in, on or about a railway and ended in a shop-window some distance off.

The only other reported cases of proceedings under this Act against a tramway company are *Brennan v. Dublin United Tramways Co.*, [1901] 2 I. R. 241 (C. A.), where such a company was held not to be liable to compensate the workman or contractors, who was injured while erecting coal-hauling machinery at one of their power stations—on the ground that such erection was merely ancillary to their business within the meaning of sect. 4 of the Act; and *Mooney v. Edinburgh and District Tramways Co., Ltd.* (1901), 4 F.

Sect. 55. 390, where a car-driver was injured while employed in oiling his car in a car-shed belonging to a cable tramway company. This shed was used for the housing of cars, and the only mechanical power used in it was used for the propulsion of the car-traversers or travelling platforms for the conveyance of cars. The shed, however, adjoined a machine-room, where mechanical power was used for the repair of parts of the cars which required repair. These parts were removed from the cars in the car-shed and afterwards re-affixed to them there. It was held that the accident occurred in, on or about a factory, and that the man was entitled to compensation.

Recovery of
tolls, penal-
ties, &c.

56. All tolls (*i*), penalties (*k*), and charges (*i*) under this Act, or under any byelaw made in pursuance of this Act (*l*), may be recovered and enforced as follows; in England before two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” and any Act amending the same (*m*), and in Scotland before the sheriff or two justices as penalties under the Railways Clauses Consolidation (Scotland) Act, 1845 (*n*).

(*i*) See sects. 10, 19, 35 to 39, 45.

(*k*) See sects. 27, 30 (promoters), 38 (licensees), 49 to 51, 54 (members of the public), 63 (4) (witnesses at an inquiry).

(*l*) See sects. 46, 47.

(*m*) Summary Jurisdiction Act, 1848 (by Short Titles Act, 1896 (59 & 60 Vict. c. 14)), formerly known as “Jervis’ Act.” The amending Acts are Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

Any one of the magistrates of the Metropolitan Police Courts, and any stipendiary magistrate for any county, borough or place (Summary Jurisdiction Act, 1848, s. 33), or the Lord Mayor or any alderman of the City of London sitting at the Mansion House or Guildhall (sect. 34), may do alone whatever is authorised by the Act to be done by one or more justices. So, too, Summary Jurisdiction Act, 1879, s. 20 (10).

Where, as here, there is no provision for the payment of penalties to any person, the clerk of the justices is to pay them to the treasurer of the county, riding, division, liberty, city, borough or place (*i.e.*, a place having a Court of Quarter Sessions (*Reigate Corporation v. Hart* (1868), L. R. 3 Q. B. 244; 37 L. J. M. C. 70)

for which the justice or justices shall have acted (Summary Jurisdiction Act, 1848, s. 31) . . . In the Metropolis such penalties are taken by the Receiver for the Metropolitan Police District under Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 47, as amended by Metropolitan Police Courts Act, 1897 (60 & 61 Vict. c. 26), s. 9, but this only applies to penalties recovered before metropolitan police magistrates, and not to penalties recovered before other magistrates within the Metropolitan Police District. (*Receiver for the Metropolitan Police District v. Bell* (1872), L. R. 7 Q. B. 433; 41 L. J. M. C. 153.)

Sect. 56.

In *R. v. Struvé* (1895), 59 J. P. 584, the Neath Tramway Company were summoned under a section of their private Act, which imposed a penalty for breach of sect. 28 of this Act for not keeping their rails in proper condition and repair. An order was made that they should pay the statutory penalty, and also 1*l.* per day so long as the offence should continue. Some eighteen months later another summons was taken out against them for payment of the whole penalty incurred by them under the last order, and an order was made for payment of the amount. This second order was held to be bad (i) as being based on the first order, which imposed penalties for offences not yet committed; and (ii) as itself imposing penalties for offences committed more than six months before the date of the summons.

Penalties duly imposed on a tramway company may be levied by distress. (*Pegge v. Neath District Tramways Co.*, [1895] 2 Ch. 508; 64 L. J. Ch. 737; [1896] 1 Ch. 684; 65 L. J. Ch. 536 (C. A).)

Where a petition has been presented for the winding-up of a company under the Companies Acts, the Court has jurisdiction under Companies Act, 1862 (25 & 26 Vict. c. 89), s. 85, to restrain an action for penalties against it. (*In re Briton Medical and General Life Assurance Association* (1886, 32 Ch. D. 503).)

The general principles laid down in the cases which have been discussed in note (i) to sect. 49 are adaptable, *mutatis mutandis*, to the bare question of procedure, apart from any question of the measure of damages. In *Wolverhampton New Waterworks Co. v. Hawkesford* (1859), 6 C. B. (N. S.) 336, 356; 28 L. J. C. P. 242, 246, Willes, J., laid down the following rules: "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there the party can only proceed by

Sect. 56. action at common law. But there is a third class, viz.: where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class."

This rule was first clearly laid down by Lord Tenterden, C. J., in *Doe v. Bridges* (1831), 1 B. & Ad. 847, 859, and was applied in *Pasmore v. Osuoldtwistle Urban Council* (1898), A. C. 387; 67 L. J. Q. B. 635, where a *mandamus* was refused in a matter which was a proper subject of proceedings under sect. 299 of Public Health Act, 1875 (38 & 39 Vict. c. 55), and again in *Deronport Corporation v. Tozer*, [1902] 2 Ch. 182; 71 L. J. Ch. 754; [1903] 1 Ch. 759; 72 L. J. Ch. 411 (C. A.), where an action was sought to be brought in respect of an infringement of by-laws, which themselves provided a penalty for infringement. But an injunction may be obtained to protect a right, either by the person to whom the right belongs (*Cooper v. Whittingham* (1880), 15 Ch. D. 501; 49 L. J. Ch. 752, or, in the case of a public right, by the Attorney-General with a relator (*A.-G. v. Ashborne (sic) Recreation Ground Co.*, [1903] 1 Ch. 101; 72 L. J. Ch. 67). In particular, where a special manner of recovering a penalty is provided for by the statute, no other method can be employed (*Cates v. Knight* (1789), 3 T. R. 442), e.g., under Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 145. (*London and Brighton Railway Co. v. Watson* (1879), 4 C. P. D. 118; 48 L. J. C. P. 316 (C. A.).)

(n) 8 & 9 Vict. c. 33, as amended by S. L. R. Act, 1892 (55 & 56 Vict. c. 19), the appropriate sections (which have not been repealed by the amending Act) being sects. 137, 138 (both amended), 139, 142, 144, 146, 147, 149 (amended), 150 (amended). These correspond with necessary variations with the English Act (8 & 9 Vict. c. 20), ss. 145 to 161, as repealed and amended by the above-mentioned S. L. R. Act, S. L. R. Act, 1875 (38 & 39 Vict. c. 66), and Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4.

As to the effect of these provisions in justifying a sentence of instant imprisonment, where it is inexpedient to issue a warrant of poinding and sale, for an alleged offence under sect. 50 of the present Act, see *Hall v. Linton* (1879), 7 R. (J. C.) 2; 4 Coup. Just. Ch. 282. It was held in *Simpson v. Glasgow Corporation* (1902), 4 F. 611, that a person residing near an electric tramway could prosecute the promoters, with the concurrence of the procurator-fiscal, for breach of a Board of Trade regulation, the promoters' private Act incorporating the present section. He was held to have a sufficient interest to do so, inasmuch as Railway Clauses Consolidation (Scotland) Act, 1845, s. 142, gives power to the sheriff or justices to award half the penalty to the informer, quite apart from any interest he might have arising from his residing near the tramway.

57. Notwithstanding anything in this Act contained Sect. 57.
 the promoters (*o*) of any tramway shall not acquire or Right of
 be deemed to acquire any right other than that of user user only.
 of any road along or across which they lay any tram-
 way (*p*), *nor shall anything contained in this Act exempt*
the promoters of any tramway laid along any turnpike road,
or any other person using such tramway, from the payment
of such tolls as may be levied in respect of the use of such
road by the trustees thereof(*q*).

(*o*) See sects. 4 and 24.

(*p*) This section is intended to limit comprehensively the rights of promoters to the necessary easement or right of user, which is requisite for the carrying out of their statutory purposes. Special aspects of this limitation are dealt with in sects. 59 to 62, while sects. 34 and 54 confer on the promoters their statutory monopoly. As to the general nature of the rights conferred on promoters, see note (*k*) to sect. 34, the cases there cited, and the cases on the rating of tramways discussed *ante*, pp. 50 *sqq*. They have, at most, a peculiar kind of limited occupation governed by the provisions of this Act and of their own Acts or Orders, and it cannot be suggested that they have any ownership in the soil of the road. In *Sydney Municipal Council v. Young*, [1893] A. C. 457; 67 L. J. P. C. 40, it was held that the road authority was not entitled to any compensation in respect of the taking by the Secretary for Public Works of part of a street, which was under their control, for the purpose of a tramway, on the ground that such taking was not a taking of property under the law of New South Wales, and also that the road authority themselves, on the well-known principle, had no other property in the street than was necessary for its proper repair and management.

The extent and nature of the franchise granted to promoters under particular grants has been discussed in *Toronto Street Railway Co. v. Toronto Corporation*, [1893] A. C. 511; 63 L. J. P. C. 10, and *Winnipeg Street Railway Co. v. Winnipeg Electric Street Railway Co.*, [1894] A. C. 615; 64 L. J. P. C. 10. In the latter case the grant was to "use and occupy any and such parts of the streets and highways aforesaid as may be required for the purposes of their railway track, the laying of the rails, and the running of their cars and carriages," and further, "such railway shall have the exclusive right of (*sic*) such portion of any street or streets as shall be occupied by the said railway." This grant, it was pointed out, conferred no right to use and occupy any part of the streets and highways beyond what was strictly necessary for the temporary purpose of constructing the railways, and for the permanent purpose of maintaining them in repair and conducting traffic upon them.

Sect. 57.

For the application to a tramway company of the principle that statutory powers must be used reasonably and *ex æquo et bono*, and will be construed strictly against the grantee, see *Ross (A.-G.) v. Montreal City Passenger Railway Co.* (1879), 24 Lower Can. Jur. 60; 2 Legal Notes, 338; 10 *Revue Légale*, 27. Where a street railway company had agreed by the terms of their franchise to run their cars over the whole of their system all the year round, the Court in Canada refused to decree specific performance on breach of the agreement. (*City of Kingston v. Kingston, Portsmouth and Cataraqui Electric Railway Co.* (1897), 28 Ont. R. 399.) But *quære* whether specific performance might not be decreed in England. (*Fortescue v. Lostwithiel and Fowey Railway Co.*, [1894] 3 Ch. 621; 64 L. J. Ch. 37.)

In *Glass v. Linton* (1882), 5 Coup. Just. Ca. 160, persons in the employ of a tramway company were not heard to plead that they were acting under the company's orders in throwing down sand in a street, and so contravening a municipal by-law. But the facts with regard to their employment were not before the Court, and the question how far the company's statutory powers would protect them was not decided.

(*q*) The words in italics were repealed by S. L. R. (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

*Arrangements
between turn-
pike road
trustees and
promoters.*

58. *The trustees of any turnpike road and the promoters of any tramway proposed to be laid or laid along the same may, with the approval of the Board of Trade, enter into agreements with each other for the payment of a composition to such trustees in respect of the user of such road for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreements from time to time.*

This section was repealed by S. L. R. (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

**Reservation
of rights of
owners, &c.
of mines.**

59. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occa-

sioned to such tramway by the working in the usual and ordinary course of their mines or minerals. Sect. 59.

The mines beneath a highway belong to the owner of the soil. (*Goodtitle v. Chester v. Alker* (1757), 1 Burr. 133, 143.) Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 82, preserves the mines and minerals to the owner of land, which is taken for the purpose of widening a highway. Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 27, reserves the minerals under a disturnpiked road or highway, which vests in an urban sanitary authority under Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 149, a somewhat unnecessary reservation in view of the present state of the law as to the extent of such vesting. But it is provided that no damage shall be done to the road or highway by the working of such minerals. The road authority can apparently bring an action in respect of such damage as though they were ordinary owners of the surface. (See *Attorney-General v. Logan*, [1891] 2 Q. B. 100.; *Attorney-General v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 64 L. J. Q. B. 207, was an action brought at the relation of a road authority against a company, whose mining operations had resulted in a subsidence of a highway and a railway which crossed it on the level, in consequence of which the railway was raised on an embankment and completely obstructed the road. The mining company were held not to be liable for the obstruction. It was suggested, however, that the road authority were entitled to nominal damages for the injury to their proprietary right, even where no actual damage had been caused to their road by a subsidence. What was a slight injury to a road might, however, be a serious injury to a tramway upon it, yet the promoters are precluded from suing in respect of it.

The present section is similar to Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 33, but there is there no saving of liability for damages. It is practically identical with Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 15 (2). Compare also the reservation of minerals (subject to the right of the promoters to purchase) in Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77 to 85, and Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 18 to 27, which are made applicable to the sanitary work of a local authority by Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883 (46 & 47 Vict. c. 37), s. 3.

But for the provision in the present section that the person working the minerals is not liable for any damages caused by such working, it appears that the tramway company would be entitled to support. (*Normanton Gas Co. v. Pope* (1883), W. N. 108; 52 L. J. Q. B. 629 (C. A.); *London and North Western Railway Co. v. Evans*, [1893] 1 Ch. 16; 62 L. J. Ch. 1 (C. A.).)

Sect. 60.

Reserving
powers of
street autho-
rities to
widen, &c.
roads.

60. Nothing in this Act shall take away or affect any power which any road authority (*r*), or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation (*s*).

(*r*) Defined in sect. 3.

Sects. 26 to 28 give the road authority control over the manner in which the promoters are to execute their works of construction and repair. Sect. 32 preserves the right of road authorities and local authorities, and of other persons therein specified, to break up the road on which the tramway is laid. It provides that the tramway shall only be interfered with under the superintendence of the promoters, and that the additional expenses caused by the existence of the tramway shall be paid by the promoters. The present section is a general saving section, different in its scope to sect. 32, which merely prescribes the conditions under which the powers therein specified are to be exercised, while not affecting the power to exercise them. Sect. 33 provides for the settlement of differences as to matters arising under the preceding sections.

Reference may be made to the above-mentioned sections and to the notes thereto, especially note (*e*) to sect. 28 and note (*r*) to sect. 29. *Bristol Trams and Carriage Co., Ltd. v. Bristol Corporation* (1890), 25 Q. B. D. 427; 59 L. J. Q. B. 441 (C. A.), affords an instance of the exercise by a road authority of their general power to alter a road on which a tramway was laid, by replacing the existing granite setts by a wood pavement. It was held that, the power being general and not exercised by virtue of this Act, the promoters were not entitled to a reference under sect. 33. Lord Esher, M. R., pointed out that, if they were entitled to such a reference, it would most seriously affect the right preserved to the road authority by the present section, and Lindley, L. J., said: "No doubt the powers of the defendants (the road authority) must be more or less affected by the existence of the tramway, and to some extent, therefore, the expressions used in sect. 60 must be controlled by the other provisions of the Act; but I do not think that the powers reserved by that section are controlled as the plaintiffs contend. That section appears to me to preserve the power of the road authority to alter the road as they think right in the interests of the public." Lopes, L. J., adds: "Sections 32 and 60 of the Tramways Act in most clear and unmistakable terms shew that the Legislature intended that the road authority should continue to possess all the powers which they possessed before 1870, subject only to the restrictions contained in sect. 32."

(s) As to the power of the persons herein named to protect their rights by opposition in Parliament, see the discussion of their *locus standi*, ante, pp. 31 (road authorities), 13 (railways), 39 (tramways).

Sect. 60.

61. Nothing in this Act shall limit the powers of the local authority (*t*) or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters (*u*) or of lessees (*x*) as to the traffic of other persons (*y*).

Power for local or police authorities to regulate traffic in roads.

(*t*) Defined in sect. 3.

(*u*) See sects. 4 and 24.

(*x*) Defined in sect. 19.

(*y*) For the regulation of traffic in urban districts in England, see Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), ss. 21 to 23, applied to urban districts by Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 171.

In the Metropolitan Police District traffic is regulated by the Commissioner of Police of the Metropolis (appointed by virtue of Metropolitan Police Act, 1856 (19 & 20 Vict. c. 2), s. 1) under Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), ss. 51 to 54, and Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), ss. 11 to 16. In the City of London and its liberties, similar powers are vested in the City Commissioner of Police by sect. 24 of the last-mentioned Act.

Sect. 46 of this Act confers on the local authority power to make regulations as to tramway traffic and other traffic in connection therewith; and sect. 48 gives the local or other proper authority power to regulate tramways as hackney carriages. See those sections and the notes thereto.

In Scots burghs, in addition to sects. 46 and 48 of this Act, Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), ss. 380 (in which "carriage" includes tramway car by sect. 4) and 385 govern the matter.

Besides the above general enactments, any local Acts which there may be which deal with the matter must be considered.

In *Ramsay v. Thomson* (1881), 9 R. 140; and *Jardine v. Stonefield Laundry Co.* (1887), 14 R. 839, which were both cases in which a passenger, alighting from a tramcar and making for the left-hand pavement, was injured by a vehicle travelling in the same direction as the car, it was held that the rule of the road, that

Sect. 61. vehicles should pass other vehicles travelling in the same direction on their right-hand side, was quite different where a tramcar was concerned, and that the drivers in question behaved quite properly in passing the tramcars on the left-hand side instead of the right. It was also held that passengers leaving a tramcar are as much bound to provide for their own safety as they would be if they were crossing from one side of the street to the other.

Compare *Wayde (Wayte) v. Carr* (1823), 2 D. & R. 255; 1 L. J. (O. S.) K. B. 63.

Reservation
of right of
public to use
roads.

62. Nothing in this Act (*z*) or in any byelaw made under this Act (*a*) shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway (*b*).

(*z*) See especially sects. 34 and 54, which define the extent of the exclusive user conferred on promoters.

(*a*) As, for instance, a by-law against obstruction of a tramway purporting to be made under sect. 50. (See that section and note (*k*) thereon.)

(*b*) These words are discussed, and the authorities upon them set out, in note (*k*) to sect. 34. The protection afforded by this section is strictly limited by these words. It affords no defence to proceedings taken in a proper case under sect. 54. (*Cottam v. Guest* (1880), 6 Q. B. D. 70; 50 L. J. M. C. 174.) But, on the other hand, it justifies any user of the tramway by the public which does not fall within the prohibition of sect. 54, or the promoters' rights of user as defined by sect. 34. (*Manchester Corporation and Manchester Carriage and Tramway Co. v. Andrews* (1889), 5 T. L. R. 470.) Add also, as to the rights of the public as against the rights of the promoters, the remarks of Lord Young in *Hall v. Linton* (1879), 7 R. (J. C.) 2; 4 Coup. Just. Ca. 282.

Regulating
inquiries
before re-
feree ap-
pointed by
the Board of
Trade.

63. Every inquiry (*c*) which by this Act the Board of Trade are empowered to make or direct (*d*) shall be made in accordance with the following provisions:

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the Board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him:

Sect. 63.

2. Ten days notice at the least (*e*) shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit :
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds (*f*): Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :
5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice (*g*), to any person tendered or summoned as a witness on the inquiry (*h*):
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury :

Sect. 63.

7. The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

(c) Other instances of local inquiries and the machinery provided for the holding of them will be found in Gas and Water Works Facilities Act, 1870, Amendment Act, 1873 (36 & 37 Vict. c. 89), s. 13, Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 293, Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 87, Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 85, and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 9.

(d) Inquiries are alluded to in sects. 5, 7, 16 (by reference), 35 and 42. In cases under sects. 35 and 42 it would seem that the Board of Trade is bound to hold a formal inquiry under the provisions of the present section. Sects. 5, 7 and 16 may be considered together for this purpose, and it would seem that under any of them the Board of Trade may either hold a formal inquiry or satisfy itself in some other way, as sect. 7 expressly provides. Under sect. 41 discontinuance has merely to be proved "to the satisfaction of the Board of Trade," and this may be done in any way. Before sanctioning a loan under sect. 20, the Board of Trade usually holds a local inquiry (see note (g) to that section).

Board of Trade Arbitrations &c. Act, 1874 (37 & 38 Vict. c. 40) (as to which compare Light Railways Act, 1896, s. 15), by sect. 2 provides (i.) that where, under the provisions of any special Act (which, by sect. 4, includes Provisional Order), the Board of Trade are required or authorised to sanction, approve, confirm or determine any appointment, matter or thing, or to make any order, or to do any other act or thing for the purposes of such special Act, they may make such inquiry as they think necessary for the purpose; and (ii.) that, where an inquiry is held by the Board of Trade for such purpose or in pursuance of any general or special Act directing or authorising them to hold any inquiry, they may hold such inquiry by any person or persons duly authorised in that behalf by an order of the Board, and such inquiry, if so held, shall be deemed to be duly held. Such order (sect. 4) may be made by writing under the hand of the President or one of the secretaries of the Board.

It will be observed that (i.) above only refers to cases under a special Act or Provisional Order, while (ii.) refers to cases under a general Act, such as the present Act, as well.

Quære whether the Court has any jurisdiction to restrain an inquiry duly instituted by the Board of Trade under this section; perhaps it might where there was fraud. (*In re Pontypridd and Rhondda Valleys Tramways Co., Ltd.* (1889), 58 L. J. Ch. 536.)

(e) That is, ten clear days' notice; see sect. 26, note (q).

Sect. 63.

(f) Recoverable under sect. 56.

(g) See Oaths Act, 1888 (51 & 52 Vict. c. 46). As to affirmations by persons, who are or have been Quakers or Moravians, see the still unrepealed Quakers and Moravians Act, 1833 (3 & 4 Will. 4, c. 49), s. 1, and Quakers and Moravians Act, 1838 (1 & 2 Vict. c. 77), and, in Scotland, Circuit Courts (Scotland) Act, 1828 (9 Geo. 4, c. 29), s. 13.

(h) See also Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 16, which gives all persons, having by law authority to receive evidence, power to administer an oath to witnesses.

64. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters: Rules for carrying Act into effect.

1. The proceedings to be had before the Board under this Act (*i*):
2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits (*k*):
3. The plans and sections of any works to be deposited by promoters (*l*) under this Act (*m*):
4. As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution (*n*).

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting within three weeks after the beginning of the then next session of Parliament (*o*).

Sect. 64.

(i) See the rules now in force, *post*, pp. 324 *sqq.*

(k) See Rules XX. to XXIV., *post*, p. 333.

(l) See sects. 4 and 24.

(m) See Rules X. to XIX., *post*, p. 327.

(n) Rules and directions as to other matters not included in the above will be found *post*, pp. 338 *sqq.*

(o) Rules Publication Act, 1893 (56 & 57 Vict. c. 66), s. 1, does not apply to rules, regulations, and by-laws made by the Board of Trade, but the remainder of the Act does. Sect. 2 provides that the rule-making authority, on certifying urgency or any special reason, may make provisional rules to come into operation at once, and to continue in force until rules have been made in regular fashion. Sect. 3 provides for the making of regulations by the Treasury. These have been made, and will be found in St. R. and O. 1894, p. 415 (No. 734). They distinguish between rules of a legislative and executive character (the former only to be subject to sect. 3 of the Act and the regulations), the distinction being based on what is and what is not contained in the volumes of Statutory Rules and Orders for 1890, 1891 and 1892, and also between general and local and personal rules. They then provide for the printing, numbering, and publication of statutory rules.

By Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31, expressions used in rules, regulations, or by-laws made under any Act, if made after Jan. 1, 1890, shall, unless the contrary intention appears, have the same meanings as they have in the Act, which conferred the power to make them.

As to the effect of the last two clauses of the present section, see *Institute of Patent Agents v. Lockwood*, [1894] A. C. 347; 63 L. J. P. C. 74.

SCHEDULE A.

Sched. A.

PART I. (*p*).

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
ENGLAND AND WALES.		
The city of London and the liberties thereof.	The Mayor, Aldermen, and Commons of the City of London.	The consolidated sewers rate (<i>q</i>).
The metropolis (1.)	The Metropolitan Board of Works (<i>r</i>).	The metropolitan consolidated rate (<i>s</i>).
Boroughs (2.)	The mayor, aldermen, and burgesses, acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town (<i>t</i>).	The commissioners, trustees, or other persons intrusted by the Local Act with powers of improving, cleansing, or paving the town (<i>t</i>).	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town (<i>t</i>).
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (<i>u</i>).	The local board (<i>u</i>)	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor (<i>x</i>).	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry (<i>x</i>).	The poor rate.

Notes.

(1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works (*r*) have power to levy a main drainage rate (*s*), except the city of London and the liberties thereof (*y*).

(2.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales" (*z*).

Sched. A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
SCOTLAND.		
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees (a).	The town council (a).	} The prison assessment or police assessment, as the local authority shall resolve (b).
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any General or Local Act (a).	The police commissioners or trustees (a).	
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners (a) does not extend.	The road trustees having the management of any road on which a tramway is proposed to be constructed (c).	The tolls, duties, and assessments leviable by the road trustees (cc).

PART II. (p).

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1.) mentioned in Schedule (A.) to the Metropolis Management Act, 1855 (d).	The vestries appointed for the purposes of the Metropolis Management Act, 1855 (d).
Districts within the metropolis (1.) formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855 (d).	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855 (d).

Note. (1.)—The term “Metropolis” has in this Part the same meaning as in Part I. of this schedule.

PART III.

Approval of Application by Local Authority (p) for a Provisional Order.

The approval of any intended application for a Provisional Order by a local authority (p) shall be in manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting (c) such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two thirds of the members constituting (c) such local authority are present and vote at such special meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter (f). Where any such resolution relating to the metropolis (g) as the same is defined in Part I. of this schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.

(p) See sect. 3.

(q) By City of London Sewers Act, 1848 (11 & 12 Vict. c. clxxiii), s. 168, the Commissioners of Sewers (now the Common Council, by City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii), s. 5) have power to levy a "sewer rate" and a "consolidated rate." Presumably the latter is meant by the expression in the text.

(r) Now the London County Council, by Local Government Act, 1888 (51 & 52 Vict. c. 41, s. 40 (8).

(s) Now the county rate, see Local Government Act, 1888, sects. 3 (1), 40 (9), 68 (4), and County Rates Act, 1852 (15 & 16 Vict. c. 81).

Sched. A. This superseded the metropolitan consolidated rate, which in its turn, by Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 3, superseded the main drainage rate.

(*t*) By Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21 (1), urban sanitary authorities are now called urban district councils, and their districts are called urban districts; but nothing in that section is to alter the style or title of the corporation or council of a borough. For every rural sanitary district there is a rural district council, whose district is called a rural district. Standing Order 22 (*post*, p. 387) expressly provides that rural district councils are to be the local authority in rural districts for the purpose of consent.

(*u*) By Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 313, references to Acts repealed by that Act (which include the two Acts here mentioned) are to be read as references to the corresponding provisions of that Act. Thus for districts constituted under that Act, the district council will be the local authority for the present purpose. The present words will also include districts formed by a county council under Local Government Act, 1888, s. 57 (*R. v. Barnes Overseers* (1896), 13 T. L. R. 25, a case decided on exactly similar words in Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122), Sched. I.). A county council in England, other than the London County Council, is not a local authority for the purpose of this Act, and must acquire powers to act as such by special enactment. It may, however, apply for an Order under Light Railways Act, 1896. (See sect. 2 of that Act.)

(*x*) By Local Government Act, 1894, in rural parishes, *i.e.*, every parish in a rural sanitary district (sect. 1 (2)), the place of the vestry, &c. is now taken for the present purpose by the parish council (sect. 6 (1)), or, if there be no parish council and so far as any grouping order does not extend, by the parish meeting (sect. 19). It will be noted that Light Railways Act, 1896, s. 2, does not permit applications for Light Railway Orders to be made by parish councils.

(*y*) That is, now, the Administrative County of London (Local Government Act, 1888, s. 40), except the City of London and its liberties.

(*z*) For the words in italics read now "The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50)," by that Act, s. 242 (1) and Sched. 9.

(*a*) By Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 40), sects. 5 and 6, a town council is to be elected for every burgh (which is defined by sect. 4 (3), and includes police burgh) by the corporate name of provost or lord provost, as the case may be, magistrates and councillors of the burgh. By sects. 7 and 8 they are to have all the powers of any commissioners of police or other commis-

sioners, and of the council and magistrates of a police burgh under Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 23 (1). Sched. A.

(b) The prison assessment vanished by Prisons (Scotland) Act, 1877 (40 & 41 Vict. c. 53). For the police assessment, see Police (Scotland) Act, 1857 (20 & 21 Vict. c. 72), s. 28, as amended by Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 11, and, where that Act does not apply, Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 340, which creates an assessment for general purposes in burghs.

(c) Now, in the districts referred to, the county council, by Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), s. 11 (2), see note (s) to sect. 43.

(cc) Now, in counties, the consolidated county rate, assessed, so far as it is imposed for the maintenance and management of highways, on all lands and heritages within each division or district or parish, as the case may be (Local Government (Scotland) Act, 1889, s. 27), and, in burghs, assessments under Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), s. 54. As to the latter, see Burgh Police (Scotland) Act, 1892, s. 129, and sect. 340 of the same Act, which provides for an assessment for general purposes.

(d) The bodies here mentioned have now ceased to exist, and their powers and duties, so far as they are here material, have been transferred to the councils for the borough (or, in the case of Westminster, the city) which comprises the respective areas in which they exercised their powers (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4). Further, as to roads, see sect. 6 of the same Act.

The provisions as to approval here are similar to those as to approval of purchase in sect. 43. They are not very apt as applied to a parish meeting.

(e) See note (l) to sect. 43.

(f) The words of this proviso have already occurred in sect. 43, and for the reasons which are given in note (s) to that section must now be regarded as spent.

(g) There is obviously some mistake here. As the words stand, they relate only to the metropolis out of all the districts specified in Part I. of the schedule; clearly they must be intended to embrace resolutions of every sort of local authority mentioned in Part I.

Sched. B.

SCHEDULE B.

PROVISIONAL ORDERS.PART I. (*h*).*Advertisement in October or November of intended application.*

(1.) Every advertisement is to contain the following particulars :

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as herein-after provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district or some part thereof is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district is situate in England (*i*) or Scotland.

PART II. (*k*).*Deposit on or before 30th November.*

- (1.) The promoters (*l*) are to deposit—
 1. A copy of the advertisement published by them.
 2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf (*k*).
- (2.) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division (*m*), and of the parish clerk of every parish (*n*) and the office of the local authority (*o*) of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division (*p*) which will be affected by the proposed undertaking, or in which any proposed new work will be made.
- (3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III. (*q*).*Deposit on or before 23rd December.*

- (1.) The promoters (*l*) are to deposit at the office of the Board of Trade—
 1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
 2. A printed draft of the Provisional Order as proposed by the promoters, with any schedule referred to therein.
 3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

Sched. B. (3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the promoters of [*short title of undertaking*] :

Showeth as follows ;

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement :

[*Here advertisement to be set out verbatim.*](*r*)

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A.B.

C.D.

Promoters.

PART IV. (*s*).

Deposit and advertisement of Provisional Order when made.

(1.) The promoters (*l*) are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace (*t*) and sheriff clerks (*p*), where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than (*u*) each.

(3.) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district (*x*).

(*h*) See sect. 6 and note (*z*) thereto. Further provisions as to advertisements are contained in Rules III., IV., and VIII., *post*, pp. 325, 326. See also, as to other notices required, Rules V. to IX. The form of proof of compliance is set out *post*, p. 342.

(*i*) Includes Wales and Berwick-upon-Tweed. (Wales and Berwick Act, 1746 (20 Geo. 2. c. 42), s. 3.)

(*k*) See sect. 6, the further provisions contained in Rules X. to XIII. (*post*, p. 327), and the Standing Orders set out in Rule XIV., as to which see note (*a*) to sect. 6. For the form of proof of compliance, see p. 345.

(*l*) Defined in sect. 4.

(*m*) Now the clerk of the county council, by Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 83 (6).

(*n*) Now, in rural parishes, after the election of a parish council, with the clerk, or, if there be none, with the chairman of the council. (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 17 (7). See also sect. 17 (8) as to custody of documents.)

(*o*) Defined in sect. 3.

(*p*) By Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 7, "sheriff clerk" includes steward clerk, and "county" includes stewardry.

(*q*) See sect. 6 and Rule XV. (*post*, p. 329). For the form of proof of compliance, see p. 347.

(*r*) By a note to Rule XIV. "This advertisement may be in print and affixed to the body of the memorial."

(*s*) See sect. 13 and also sect. 14, and Rule XVIII. (*post*, p. 332). As to proof of compliance, see Rule XIX., and the form of proof, p. 350.

(*t*) See note (*m*) above. The following words seem to show that "clerks of the peace" here include parish clerks, as to whom see note (*n*) above.

(*u*) The Rules contain a note—"The Board of Trade consider that the price to be here inserted should not be more than one shilling." Compare Part III. (2).

(*x*) Further provisions as to what the advertisement must contain will be found in Rule XIX. (2).

SCHEDULE C.

PART I. (*y*).

Notice and Deposit of Lease by Local Authority (z).

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

(1.) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.

Sched. C.

4. The place where the same is deposited for public inspection.

(2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England (*a*) or Scotland.

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority (*z*) or at some other convenient place within the district to which such lease relates.

PART II. (*b*).*Notice of Byelaws.*

Within one month after the making of any byelaw notice of the making of the same, and a copy of such byelaw, shall be published by advertisement in manner following:

(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such byelaw; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2.) The advertisement is also, in every case, to be inserted once at least in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England (*a*) or Scotland.

(*y*) See sect. 19.

(*z*) Defined in sect. 3.

(*a*) See note (*i*) to Sched. B.

(*b*) See sect. 46.

THE
TRAMWAYS (SCOTLAND) ACT, 1861.

(24 & 25 Vict. c. 69.)

An Act to provide for the Formation of Tramways on Turnpike and Statute-Labour Roads in Scotland. [1st August, 1861.]

[NOTE.—This futile old Act is printed for the sake of completeness, because it is still on the statute book. But, though unrepealed, it is now practically spent, as will be seen from the notes on its sections, and by the alterations which have taken place in the law relating to turnpike and statute-labour roads—these are now all free and open highways by Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), s. 33. No practical use has been made of this Act, for various reasons, particularly because (i.) it relates mainly to country districts, where no one wished, in the days of horse traction, to construct tramways, and least of all on statute-labour roads which were not main roads; (ii.) by sect. 8 the consent of the persons entitled to two-thirds of the money borrowed on the tolls was required before the trustees could devote the tolls to making the tramway. Not only were the turnpike trusts usually insolvent, but railway companies were often their principal creditors. It was therefore not very likely that the necessary consent would ever be obtained.]

[Preamble repealed by S. L. R. Act, 1892 (55 & 56 Vict. c. 19).]

1. This Act may be cited for all purposes as “The Short title.
Tramways (Scotland) Act, 1861.”

2. The following words in this Act shall have the Interpretation
of terms.
several meanings hereby assigned to them:

The word “trustees” shall mean the trustees for the time being appointed and acting under any local Turnpike or Statute-Labour Road Act in Scotland (a):

The word “clerk” shall mean the clerk for the time being to such trustees (a):

The word “tramways” shall mean and include any tramroad or tramway, whether temporary or per-

Sect. 2.

manent, formed of iron, stone, or other material, and laid down level with the surface on any turnpike or statute labour road (*b*) under the provisions of this Act.

(*a*) Now the county councils and burgh local authorities. See note (*s*) to sect. 43 of Tramways Act, 1870.

(*b*) All turnpike tolls and statute labour and payment in lieu thereof were abolished by Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), s. 33, and all turnpike roads became highways, and all highways became open, with certain immaterial exceptions, by the same section.

With respect to the formation of tramways (*c*) on turnpike roads (*d*):

Special meeting of trustees may be called to consider the expediency of laying down tramways.

3. Any two trustees (*e*) may, by a requisition under their hands, require the clerk (*e*) to call a special meeting of the trustees for any day and hour specified in such requisition, not being earlier than twenty-one days after the date thereof, for the purpose of considering the expediency of forming tramways on the roads under their management, or any part thereof; and within three days after the receipt of such requisition the clerk shall call such special meeting, to be held at the time specified therein, and at the place where the meetings of the trustees are usually held; and notice of such meeting, and of the special purpose thereof, shall be given by advertisement inserted once in each of two successive weeks in a newspaper published in the county in which such roads are situated, or if there be no newspaper published therein, in a newspaper published in an adjoining county.

(*c*) Defined in sect. 2.

(*d*) See note (*b*) to sect. 2.

(*e*) See note (*a*) to sect. 2.

Trustees may remit to their surveyor or to an engineer to prepare

4. If the trustees (*f*) present at such special meeting shall resolve that it is expedient to form tramways (*g*) on the roads under their management, or any part

thereof (*h*), they may remit to their surveyor, or to any engineer to be named by them, to prepare plans of the proposed tramways, showing the extent thereof, and the mode in which the same are to be formed, and the portions of the roads to be occupied thereby, with an estimate of the expense of such tramways; and such plans and estimate of expense shall be lodged with the clerk (*f*), for the inspection of the trustees, at least one month previous to the general or special meeting before which the same are to be laid.

Sect. 4.

plans of tramways and estimate of expense.

(*f*) See note (*a*) to sect. 2.

(*g*) Defined in sect. 2.

(*h*) See note (*b*) to sect. 2.

5. The plans and estimate of expense prepared by such surveyor or engineer shall be laid before any general meeting of the trustees (*i*) convened under the provisions of the General Turnpike Road Act for Scotland, first and second William the Fourth, chapter forty-three (*k*), or of any local Act (*l*) under which the trustees are appointed and acting, or before a special meeting of the trustees to be called in the manner provided by the said General Turnpike Road Act; and the trustees present at such general or special meeting may approve or disapprove of such plans and estimate of expense, or may direct such alterations to be made thereon as they may deem necessary, and may resolve to proceed or not to proceed with the formation of the tramways (*m*) as they may think fit.

Plans and estimate to be laid before general or special meeting of trustees.

(*i*) See note (*a*) to sect. 2.

(*k*) Repealed by S. L. R. (No. 2) Act, 1890 (53 & 54 Vict. c. 51). Certain sections, however, of the Act, which are here immaterial, were incorporated with Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51), by sect. 123 and Sched. C. of that Act.

(*l*) All local road Acts have now ceased to have effect by virtue of sects. 4 and 5 of Roads and Bridges (Scotland) Act, 1878, and Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50, s. 16).

(*m*) Defined in sect. 2.

Sect. 6.

Tramways
may be laid
down accord-
ing to plans.

6. On such plans and estimate being finally approved by the trustees(*n*) at any general or special meeting, as the case may be, it shall be lawful for the trustees to form and lay down the tramways(*o*) in the manner described on such plans, and on the roads included therein, or on the sides of such roads.

(*n*) See note (*a*) to sect. 2.

(*o*) Defined in sect. 2.

Tramways to
form part of
roads.

7. The tramways(*p*) shall be laid down on the surface of the roads or on the sides thereof, and shall form part of the roads, and, subject to the provisions of this Act, all the enactments of the said General Turnpike Road Act(*q*), and of any local Act(*r*) relating to the road on which the tramways are laid down, shall be applicable to the tramways, in the same manner and to the same effect as such enactments are applicable to such roads(*s*).

(*p*) Defined in sect. 2.

(*q*) Now repealed; see note (*k*) to sect. 5.

(*r*) See note (*l*) to sect. 5.

(*s*) Presumably the Acts at present applicable to highways would now apply to the tramways.

Expense of
forming and
maintaining
tramways,
how to be
defrayed.

8. The expense of forming and laying down the tramways(*t*), and incidental thereto, shall be defrayed out of the tolls and revenues(*u*) of the roads under the management of the trustees(*x*), or out of money to be borrowed on the credit of such tolls and revenues; and it shall be lawful for the trustees to borrow money for the purpose of defraying such expense, and to grant assignments of such tolls and revenues in security of the payment of the money so to be borrowed, in the manner provided by the said General Turnpike Road Act(*xx*), any provision or restriction with respect to the power of borrowing money contained in any local Act(*xx*) relating to such roads to the contrary notwithstanding; and the expense of maintaining, managing, and repairing the tramways

shall be defrayed by the trustees out of the tolls and revenues of such roads: Provided (*y*) that it shall not be lawful for the trustees to apply any part of such tolls and revenues in defraying the expense of forming the tramways, or to borrow money for that purpose on the security of such tolls and revenues, without the consent in writing of the persons entitled to two-thirds of the money borrowed, and remaining due on the credit of such tolls and revenues. Sect. 8.

(*t*) Defined in sect. 2.

(*u*) For what now represents these, see note (*cc*) to Sched. A. of Tramways Act, 1870.

(*x*) See note (*a*) to sect. 2.

(*xx*) See notes (*k*) and (*l*) to sect. 5.

(*y*) For the result of this proviso, see the note at the beginning of this Act.

9, 10. [*Repealed by S. L. R. Act, 1892 (55 & 56 Vict. c. 19).*]

11. The trustees (*z*) may make such regulations for and with respect to the use of the tramways (*a*) as they think fit; and such regulations shall be published by printed copies thereof being affixed on boards to be set up at each end of the tramways, or at the toll-gates (*b*) nearest thereto; and every person who commits any breach or contravention of such regulations shall be liable to a penalty not exceeding five pounds for each offence; and such penalties may be sued for, imposed, and recovered in the manner provided by the said General Turnpike Road Act (*c*). Trustees may make regulations for use of tramways.

(*z*) See note (*a*) to sect. 2.

(*a*) Defined in sect. 2.

(*b*) Now non-existent.

(*c*) Now repealed; see note (*k*) to sect. 5.

With respect to the formation of tramways (*d*) on statute-labour roads (*e*):—

12. In the event of any application being made to the trustees (*f*) of any statute-labour road by any person or company desiring to form tramways on Tramways may be formed on statute-labour roads.

Sect. 12. such road, the trustees may, at any general or special meeting convened under the provisions of the General Statute-Labour Road Act for Scotland, eighth and ninth Victoria, chapter forty-one (*g*), or of any local Act (*h*) under which the trustees are appointed and acting, authorise such person or company to form the tramways; and on such authority being granted, it shall be lawful for such person or company, at his or their own expense, to form and lay down the tramways to such extent, in such manner, and on such terms as shall be agreed upon and approved by the trustees or their surveyor.

(*d*) Defined in sect. 2.

(*e*) See note (*b*) to sect. 2.

(*f*) See note (*a*) to sect. 2.

(*g*) Repealed by S. L. R. Act, 1891 (54 & 55 Vict. c. 67).

(*h*) See note (*l*) to sect. 5.

Tramways to
form part of
roads.

13. The tramways (*i*) shall be laid down on the surface of the roads or on the sides thereof, and shall form part of the roads, and may be used by all carts, waggons, and carriages passing over the roads; and, subject to the provisions of this Act, all the enactments of the said General Statute-Labour Road Act (*k*), and of any local Act (*l*) relating to the roads on which the tramways are laid down, shall be applicable to the tramways, in the same manner and to the same effect as such enactments are applicable to such roads (*m*); and the expense of maintaining, managing, and repairing the tramways shall be defrayed by the trustees (*n*) out of the funds and revenues (*o*) under their management, or by the person or company by whom the same were laid down, or jointly by the trustees, and such person or company, as may be agreed upon.

(*i*) Defined in sect. 2.

(*k*) Repealed by S. L. R. Act, 1891 (54 & 55 Vict. c. 67).

(*l*) See note (*l*) to sect. 5.

(*m*) Presumably the Acts now applicable to highways would now apply to the tramways. **Sect. 13.**

(*n*) See note (*a*) to sect. 2.

(*o*) See note (*cc*) to Sched. A. of Tramways Act, 1870.

14. The trustees (*p*) may make such regulations for and with respect to the use of the tramways (*q*) as they think fit; and before taking effect such regulations shall be published by printed copies thereof being affixed on boards to be set up at each end of the tramways; and every person who commits any breach or contravention of such regulations shall be liable to a penalty not exceeding five pounds for each offence; and such penalties may be sued for, imposed, and recovered in the manner provided by the said General Statute-Labour Road Act (*r*). Trustees may make regulations for use of tramways.

(*p*) See note (*a*) to sect. 2.

(*q*) Defined in sect. 2.

(*r*) Repealed by S. L. R. Act, 1891 (54 & 55 Vict. c. 67).

15. It shall be lawful for the person or company by whom the tramways (*s*) on any statute-labour road (*t*) were laid down, or his or their heirs or successors, and they are hereby required to take up and remove the same at such time as shall have been agreed on with the trustees (*u*): Provided that on the tramways being so removed, the road on which the same were laid down shall, to the satisfaction of the trustees or their surveyor, be restored by such person or company, or his or their heirs or successors, at his or their own expense, to the same state and condition, as nearly as may be, in which such road was at the time of laying down the tramways. Tramways may be removed.

(*s*) Defined in sect. 2.

(*t*) See note (*b*) to sect. 2.

(*u*) See note (*a*) to sect. 2.

16. Nothing in this Act contained shall authorise the trustees (*x*) to form or lay down tramways (*y*). Tramways not to be laid down in

Sect. 16. within the municipal or Parliamentary boundaries of any royal or Parliamentary burgh, without the consent in writing of the Magistrates and Council(*z*) of such burgh first had and obtained.

burghs
without con-
sent.

(*x*) See note (*a*) to sect. 2.

(*y*) Defined in sect. 2.

(*z*) Now the town council, called by the corporate name of "the provost, magistrates and councillors" of the borough (Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), s. 5).

Tramways to
be kept in
constant
good order,
and trustees
may acquire
right to them
when pro-
posed to be
removed.

17. The person or company by whom the tramways(*a*) on any statute-labour road(*b*) shall have been laid down, and their heirs and successors, shall maintain such tramways, while unremoved, in constant good order for traffic at the sight and to the satisfaction of the surveyor; and when they shall propose to remove the same as aforesaid, the trustees(*c*) shall be entitled to acquire all right therein belonging to such person or company, or their heirs and successors, on payment to them of such sum as the same may be valued at by valuers agreed on by the trustees and such person or company, or their heirs and successors, or, failing such agreement, by any valuator or valuers appointed by the sheriff of the county(*d*) on the application of either party.

(*a*) Defined in sect. 2.

(*b*) See note (*b*) to sect. 2.

(*c*) See note (*a*) to sect. 2.

(*d*) Includes stewartry (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 7).

THE MILITARY TRAMWAYS ACT, 1887.

(50 & 51 Vict. c. 65.)

An Act to facilitate the construction of Tramways by Her Majesty's principal Secretary of State for the War Department, and for other purposes connected therewith.

[16th September, 1887.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Military Tramways Act, 1887. Short title.

2. This Act shall not extend to Ireland.

Extent of Act.

3. The Board of Trade may on the application of one of Her Majesty's Principal Secretaries of State (in this Act referred to as the Secretary of State) make and settle Provisional Orders (to be confirmed in manner provided by this Act) authorising the construction and maintenance by the Secretary of State of tramways on any land belonging to him or to be acquired by him for such purpose, or along or across any road, and authorising the working and using by him of such tramways.

Power to Secretary of State to obtain Provisional Orders.

Up to the present time the following Provisional Orders have been made and confirmed under this Act:—

Lydd Military Tramways Order, 1890, published in the *London Gazette*, May 27, 1890 (p. 3028), confirmed by Order in Council, Nov. 24, 1891.

Sect. 3. Shoeburyness Military Tramways Order, 1893, published in the *London Gazette*, April 25, 1893 (p. 2430).

Shoeburyness Military Tramways Order, 1893, Amendment Order, 1896, published in the *London Gazette*, March 27, 1896 (p. 1966), confirmed by Order in Council, Aug. 1, 1896 (Stat. R. & O. 1896, No. 670).

Chatham Military Tramways Order, 1901, published in the *London Gazette*, Jan. 7, 1902 (p. 158), confirmed by Order in Council, June 11, 1902 (Stat. R. & O. 1902, No. 469).

Provisions
for protection
for local and
road autho-
rities, and of
the public.

4. So far as regards the construction and maintenance of the tramways authorised by any Provisional Order along or across any road, the Board of Trade shall insert in such Provisional Order either—

33 & 34 Vict.
c. 78.

(a.) The following provisions of the Tramways Act, 1870; that is to say,

Sections twenty-six to twenty-nine, both inclusive (relating to the breaking up, reinstatement, and repair of roads);

Sections thirty and thirty-one (relating to the protection of gas and water companies, and sewers);

Section thirty-two (relating to the rights of authorities and companies to open roads); and

Section thirty-three (relating to any difference between the promoters and any authority or company being referred to the Board of Trade);

subject to any modification which to the Board of Trade may seem necessary or proper (b), or

(b.) Such other provisions with respect to the matters referred to in such sections as to the Board of Trade may seem necessary or proper.

As regards all of the tramways authorised by such Provisional Order, the Board of Trade shall insert therein such sections of the Tramways Act, 1870, with or without any modifications, and such other provisions as to them may seem necessary or proper for the pro-

Sect. 4.

tection of the local and road authorities, and of the public, and of any persons whose interests might be affected by the construction or user of such tramways, as well as for giving suitable powers to the Secretary of State and to persons acting under his direction (*c*).

(*b*) The Orders made hitherto have incorporated these sections of Tramways Act, 1870, so far as the tramways are laid on or across any road, with the important difference that they do not incorporate so much of sects. 27 and 30 as relates to penalties, or so much of sect. 28 as authorises the road authority, in the event of the promoters failing to comply therewith, to do the work themselves at the promoters' expense. In lieu of the last-mentioned provision they provide that the road authority (defined, as well as local authority, in Tramways Act, 1870, s. 3), or twenty inhabitant ratepayers of the district, may complain of the Secretary of State's default to the Board of Trade, who may direct an inquiry, and if they thereafter certify that there has been a default, the Secretary of State shall make it good.

(*c*) The Orders also contain provisions for the approval of the rails, number of rails and gauge by the Board of Trade, for the proper construction and maintenance of the track, and for the access of local authorities to sewers and drains.

There are also provisions corresponding to sects. 57 and 60 of Tramways Act, 1870, limiting the rights of the Secretary of State to mere user of roads, and preserving the rights of road authorities to widen, divert, &c.; and sects. 61 and 62, as to the regulation of traffic and the rights of the public, are applied. In all these respects they resemble Light Railway Orders of Class B.

5. Any Provisional Order may authorise the Secretary of State, with the approval of the Commissioners of Her Majesty's Treasury, to acquire any lands specified in such Provisional Order which may be required for the purpose of the tramways authorised by the same, and for such purposes the provisions of the Lands Clauses Acts may be incorporated with such Provisional Order, subject to such modifications as to the Board of Trade may seem expedient (*d*).

Provisional
Order may
authorise
acquisition of
land.

(*d*) Contrast this section with Tramways Act, 1870, s. 15, which forbids the incorporation with a Provisional Order of the provisions of the Lands Clauses Acts as to compulsory purchase.

Sect. 6.

As to use of
tramways.

6. The Secretary of State may work and use the tramways and may use on the tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by the Provisional Order; and, subject to the provisions of the Provisional Order and of this Act, the Secretary of State shall have the exclusive use of the tramways for carriages with flange wheels or other wheels suitable only to run on the rail so prescribed.

All carriages used on any tramway shall be moved by the power prescribed by the Provisional Order; and where no such power is prescribed by animal power only. Whenever the Provisional Order authorises the use of electricity as a motive power, or otherwise, in connexion with any tramway, such provisions shall be inserted in the Provisional Order as are proper for the protection of the telegraphs of Her Majesty's Postmaster General.

If any person, except under the authority of a Provisional Order made by the Board of Trade under this Act, uses any of the tramways or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds (*e*).

(*e*) Compare Tramways Act, 1870, ss. 34 and 54.

Penalties on
persons in-
juring or
obstructing
tramways.

7. Any Provisional Order may contain such provisions as to the Board of Trade may seem necessary or proper, imposing penalties on any persons injuring, obstructing, or trespassing on any of the tramways, or any carriages used thereon, or in any way contravening any of the provisions of such Provisional Order (*f*).

(*f*) The Orders apply sects. 49 and 50 of Tramways Act, 1870, and also provide penalties for wilful injury to or trespass upon the tramway, engines or carriages.

8. The Secretary of State may, with the approval of the Board of Trade, from time to time make, and when made rescind, annul, or add to, such byelaws and regulations with regard to the traffic on and the use of the tramways on which steam or any mechanical power may be used under the authority of any Order made under this Act, as to the Secretary of State and to the Board of Trade may seem necessary or proper for securing to the public all reasonable protection against danger in the use on the tramways of such steam or mechanical power.

Sect. 8.

Secretary of State may make bye-laws as to use of steam or mechanical power.

Any such byelaws or regulations may impose penalties for any offence against the same.

All byelaws and regulations made under the authority of this section shall be signed by the Secretary of State and by a secretary or an assistant secretary of the Board of Trade, and when so signed the same shall be deemed to be duly made in accordance with the provisions of this Act (*g*).

(*g*) The Orders provide that the Secretary of State shall cause notice of any by-laws or regulations made under this section to be published in such manner as the Board of Trade direct. The Lydd and Shoeburyness Orders also contain provisions as to the proof of orders, certificates, by-laws and regulations.

9. Any penalties imposed by any Provisional Order, byelaw, or regulation made under the authority of this Act shall not exceed five pounds for each offence, or in the case of a continuing offence, five pounds for the first day, and one pound for every additional day during which the offence continues.

General provisions as to penalties.

Any penalties incurred under this Act, or under any Provisional Order, byelaw, or regulation made thereunder, may be recovered in manner provided by section fifty-six of the Tramways Act, 1870.

10.—(1.) When a Provisional Order has been made by the Board of Trade on the application of the Secretary of State under this Act, it shall be published

Publication and confirmation of Provisional Order.

Sect. 10. in the "London Gazette" (*h*), and in such other manner by deposit and advertisement as to the Board of Trade may seem proper, but it shall not be of any effect unless confirmed as herein-after provided.

(2.) Where within one month after the publication of the Provisional Order in the "London Gazette," and of such other publication or advertisement as the Board of Trade may direct, a petition against it by any local or road authority within whose district it is proposed by the Provisional Order to authorise the construction of any tramways or by the owner or occupier of any land which the Secretary of State is authorised to acquire by the Provisional Order has been received by the Board of Trade, and is not withdrawn, the Provisional Order shall require the confirmation of Parliament, and the Board of Trade may, if they think fit, in such case, at any time after the expiration of such month, procure a Bill to be introduced into either House of Parliament for an Act to confirm such Provisional Order, which shall be set out at length in the schedule to the Bill (*i*).

If, while any such Bill is pending in either House of Parliament, a petition is presented against any Provisional Order comprised therein, a Bill, so far as it relates to the Order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act (*k*).

The Act of Parliament confirming a Provisional Order under this Act shall be deemed a Public General Act.

(3.) Where at the expiration of one month after the publication of a Provisional Order in the "London Gazette," and of such other publication or advertisement as the Board of Trade may direct, no such petition against it has been received by the Board of Trade, or where every such petition that may have been presented has been withdrawn, the Board of

Sect. 10.

Trade may, if they think fit, submit such Provisional Order for confirmation to Her Majesty in Council, and it shall be lawful for Her Majesty to confirm such Provisional Order by Order in Council (*h*), and thereupon such Provisional Order shall be of full force and effect in the same manner in all respects as if it had been confirmed by Act of Parliament (*l*).

(4.) The Board of Trade, on the application of the Secretary of State, may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order to be confirmed in manner provided by this section (*m*).

(*h*) See note to sect. 3.

(*i*) There has hitherto been no opposition to a Military Tramways Order, and this procedure has not yet been followed.

(*k*) See Tramways Act, 1870, s. 14, and notes thereto, and the discussion of *locus standi*, *ante*, pp. 12 *sqq.*, the principles of which will apply to the present matter.

(*l*) Contrast Tramways Act, 1870, whereby (sect. 14) every Provisional Order has to be confirmed by Act, whether objected to in the first instance or not. A Provisional Order under sect. 11 of the present Act has to be confirmed in the same way.

(*m*) The Shoeburyness Order of 1893 was amended by that of 1896 (see note to sect. 3). The amendment consisted in the substitution of a new scheduled agreement between the London, Tilbury and Southend Railway Co. and the Secretary of State for War for that scheduled to the former Order.

11. Where any tramway has been constructed by the Secretary of State along a road in any district, the local authority of such district or any person (herein-after referred to as the promoters) may apply to the Board of Trade for a Provisional Order authorising the promoters to use such tramways in addition to the Secretary of State, in the same manner and subject to the same conditions so far as the same are applicable as if the promoters were applying for a Provisional Order authorising the construction of tramways under the provisions of the Tramways Act,

Provisional Order may be obtained by local authority, &c., for use of tramways.

Sect. 11. 1870, and the said provisions shall apply accordingly: Provided always, that the promoters shall give to the Secretary of State such notice of the application, or intended application, as may be prescribed.

The Board of Trade may on such application settle and make a Provisional Order authorising the promoters to use such tramways on such payment and subject to such conditions as to the maintenance and repair of the tramway and road or otherwise as to the Board of Trade may seem expedient, and the provisions of the Tramways Act, 1870, shall, so far as the same are applicable and except where the same are expressly varied by the Provisional Order, apply to the Provisional Order and the tramways thereby authorised to be used.

If the Secretary of State so desires, the Board of Trade, in lieu of providing by such Provisional Order for the user of the tramways by the promoters, shall by such Provisional Order provide for the sale of the tramways by the Secretary of State to the promoters in such manner and subject to such conditions as to the user of the tramways by the Secretary of State and otherwise as may seem expedient to the Board of Trade (*n*).

(*n*) This section has not yet been put into force.

Interpreta-
tion.

12. For the purposes of this Act, unless the context otherwise requires, terms shall have the same meaning as in the Tramways Act, 1870, provided as follows:

The term "road" shall include any highway (*o*):

The term "person" shall include a corporation:

The term "tramway" shall mean any tramway constructed or to be constructed by the Secretary of State under the authority of a Provisional Order under this Act.

For the purpose of incorporating any sections of the Sect. 12.
Tramways Act, 1870, with this Act—

The terms “tramway duly authorised” and a
“tramway” in such sections shall be deemed to
mean a tramway authorised by a Provisional
Order under this Act :

The term “promoters” in the said sections shall
mean the Secretary of State.

(o) Compare the definition of “road” in Tramways Act, 1870,
s. 3, and note (c) thereto.

THE NAVAL WORKS ACT, 1899.

(62 & 63 Vict. c. 42.)

An Act to amend the Law with respect to the construction and use of Tramways for Naval purposes.

[9th August, 1899.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Powers of Admiralty with respect to tramways. 50 & 51 Vict. c. 65.

2. The Admiralty shall have the same powers as a Secretary of State with respect to the construction, maintenance, working, and use of tramways, and the Military Tramways Act, 1887, shall apply accordingly as if references therein to the Secretary of State included references to the Admiralty.

The only Order which has been hitherto made under this Act is the Chittenden Naval Tramway Order, 1901, published in the *London Gazette*, April 12, 1901 (p. 2534), confirmed by Order in Council, July 24, 1901. Its provisions are similar to those of the Military Tramways Orders, for which see the notes to Military Tramways Act, 1887 (*ante*, pp. 287, 289, 291).

Short title.

3. This Act may be cited as the Naval Works Act, 1899.

THE
PARLIAMENTARY DEPOSITS AND
BONDS ACT, 1892.

(55 & 56 Vict. c. 27.)

An Act to authorise the release of certain Deposits, and the cancellation of certain Bonds, made or given to secure the performance of undertakings authorised by Parliament.

[27th June, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1.) Where in pursuance of any general or special Act of Parliament, or of any rules made thereunder (*a*), moneys or securities have been deposited with, or are standing in the name of, the Paymaster-General to secure the completion by any company of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf (*b*), the High Court may, notwithstanding anything in any such general or special Act or rules, order that the moneys or securities (in this Act called the deposit fund), or any part thereof, be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the undertaking, or any portion

Power to
release
deposits.

Sect. 1. thereof (*c*), or who have been subjected to injury or loss in consequence of any compulsory powers of taking property given in connexion with the undertaking (*d*), and have received no compensation or inadequate compensation for such injury or loss; and also, in the case of a tramway company (*e*), towards compensating the road authorities for the expenses incurred by them in taking up any tramway or materials connected therewith placed by the tramway company in or on any road vested in or maintainable by the road authorities, and in making good all damage caused to such roads by the construction or abandonment of the tramway (*f*).

(2.) Subject to payment of any such compensation, and notwithstanding any provision as to forfeiture to the Crown (*g*), the High Court may, if a receiver has been appointed, or the company is insolvent and has been ordered to be wound up, or the undertaking has been abandoned (*h*), order that the deposit fund or any part thereof be paid or transferred to the receiver or to the liquidator of the company (*i*), or be applied as part of the assets of the company for the benefit of the creditors thereof (*k*).

(3.) Subject to such application as aforesaid the High Court may, after such public notice as to the Court seems reasonable (*l*), order that the deposit fund or any part thereof (*m*) be paid or transferred to the depositors or the persons claiming through or under them (*n*).

(4.) If any money or securities deposited with or standing in the name of the Paymaster General for the purposes of this section on or before the thirty-first of March one thousand eight hundred and ninety are not claimed by or on behalf of the depositors thereof within ten years after the passing of this Act, the Treasury may pay or transfer the same to the National Debt Commissioners to be applied by them towards the reduction of the National Debt.

(5.) This section shall apply to any person or body of persons authorised by Parliament or by any such certificate as aforesaid to carry out an undertaking as if he or they were a company. Sect. 1.

(a) By Tramways Act, 1870, s. 12, the promoters, unless they are a local authority, are required to make a deposit in the manner and subject to the conditions prescribed by the Board of Trade Rules.

These Rules (XXII. to XXIV., *post*, p. 336) substantially embody the provisions of the present section; but it is to be observed that the present section is expressed to be applicable notwithstanding anything in the Act or Rules. Rule XXI. (p. 335) provides for a penalty in lieu of deposit, where the promoters possess a tramway already opened for public traffic.

Neither Light Railways Act, 1896, nor the Rules made thereunder require a deposit, but by sect. 11 (k) of the Act the Order may contain provisions in the case of a "new company," requiring the company to make a deposit, and providing for the time of making and the application of the deposit. Such provisions are commonly inserted, and will be found *post*, p. 581. They substantially conform to the present section. Where the promoters are not a "new company," a clause provides for a penalty in lieu of deposit in terms similar to Tramways Rule XXI. (see *post*, p. 565).

(b) It was held in *Ex parte Chambers*, [1893] 1 Ch. 47; 62 L. J. Ch. 78, that the Court had no jurisdiction to make an order for the repayment of a Parliamentary deposit until the time limited for the completion of the undertaking had expired, even though the company's compulsory powers for the purchase of land had expired, and the company had raised no capital nor taken any steps to acquire land, and had passed a resolution to abandon the undertaking.

Kekewich, J., in *In re Dudley and Kingswinford Tramways Co.* (1893), W. N. 162; 63 L. J. Ch. 103, held that the only evidence of non-completion which the Court could accept, on an application for the payment out of a deposit, was a notice purporting to be published by the Board of Trade under Tramways Act, 1870, s. 18. This decision has now, however, been overruled by *Attorney-General v. Bournemouth Corporation*, [1902] 2 Ch. 714; 71 L. J. Ch. 730 (C. A.).

An application for the return of a deposit is vacation business. (*In re Wigan Junction Railway Act*, 1875 (1875), L. R. 10 Ch. 541; 44 L. J. Ch. 774.)

(c) "Commencement, construction, or abandonment" must be read disjunctively, and compensation may be awarded out of the deposit for injury due to any of the three causes mentioned. The measure of injury due to abandonment is determined by a comparison of the value of the estate immediately before and imme-

Sect. 1.

diately after the abandonment (*In re Potteries, Shrewsbury and North Wales Railway Co.* (1883), 25 Ch. D. 251; 53 L. J. Ch. 556 (C. A.)), and account may also be taken of the breach of a collateral obligation, if it is such that a breach of it is necessarily involved in the abandonment and indistinguishable from it. (*In re Ruthin and Cerrig-y-Druidion Railway Act* (1886), 32 Ch. D. 438; 56 L. J. Ch. 30 (C. A.).)

(d) "In consequence of any compulsory powers of taking property" means "in consequence of the exercise of the compulsory powers," and a mere service of a notice to treat, even if followed by a contract, is not such an exercise as to give a landowner priority in compensation. Even if it were, expenses incurred by the landowner to his solicitor and surveyor in consequence of the notice, whether followed or not by a subsequent contract, would not constitute "injury or loss in consequence of any compulsory powers of taking property." (*In re Uxbridge and Rickmansworth Railway Co.* (1890), 43 Ch. D. 536; 59 L. J. Ch. 409 (C. A.).) The three cases last cited were decided on private Acts couched in similar terms to the present sub-section. Compare also Parliamentary Deposits Act, 1846 (9 & 10 Vict. c. 20), s. 5; Abandonment of Railways Act, 1850 (13 & 14 Vict. c. 83), s. 20; and Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), ss. 5, 6, 7.

(e) The following provision should be applied by the Order, where a light railway is to be constructed in whole or in part along a road.

(f) As in *In re Colchester Tramways Co.*, [1893] 1 Ch. 309; 62 L. J. Ch. 243.

(g) The law and practice as to deposits under the old Board of Trade Rules before the passing of the present Act is discussed in note (g) to sect. 12 of Tramways Act, 1870. The most important change which is effected by the present Act is the grant of discretion to the Court to deal with the fund in spite of any provision as to forfeiture to the Crown. The result of this is that the Court may pay the balance of the fund to the depositors after all proper deductions have been made under the Act; and the decision in *In re Lowestoft, Yarmouth and Southwold Tramways Co.* (1877), 6 Ch. D. 484; 46 L. J. Ch. 393, that the promoters are not in any manner to recover the deposit money or any of it, is no longer law. The Crown, however, is still entitled to its costs out of the fund. (*In re Colchester Tramways Co.*, [1893] 1 Ch. 309; 62 L. J. Ch. 243.)

(h) Sub-sect. 2 was held to have no application in *In re Hull, Barnsley and West Riding Junction Railway* (1893), W. N. 83, where a company had completed and opened for traffic the whole of its undertaking except a small piece of line, the time for the completion of which had expired, though its abandonment had not been authorised by any Act.

(i) The deposit is not made part of the general assets of the company, but only assets for a particular purpose, namely, the

Sect. 1.

payment of the creditors. Thus, the liquidator is allowed out of the deposit the proper costs of proceedings taken by him in reference to the application of the deposit; but the Court cannot order his general costs of the liquidation to be paid out of the deposit. (*In re Colchester Tramways Co.*, [1893] 1 Ch. 309; 62 L. J. Ch. 243; *Turpin v. Somerton, &c. Tramway Co.* (1900), W. N. 94.) In the report of the latter case it is stated that a contrary decision was given in *Ex parte Bradford and District Tramways Co.*, [1893] 3 Ch. 463; 62 L. J. Ch. 668.

(k) Since the passing of this Act there is no longer any distinction between meritorious and non-meritorious creditors, a distinction laid down in *In re Lowestoft, Yarmouth and Southwold Tramways Co.* (1877), 6 Ch. D. 484; 46 L. J. Ch. 393 (see note (g) to sect. 12 of Tramways Act, 1870), in respect of sharing in the deposit. (*In re Manchester, Middleton and District Tramways Co.*, [1893] 2 Ch. 638; 62 L. J. Ch. 752; *In re Hull, Barnsley and West Riding Junction Railway* (1893), W. N. 83; *Ex parte Bradford and District Tramways Co.*, [1893] 3 Ch. 463; 62 L. J. Ch. 668; *Muir v. Forman's Trustees* (1903), 40 S. L. R. 404.)

"Creditors" here is not limited to the creditors of the particular undertaking which has been abandoned, but includes the general creditors of the company. (*In re Hull, Barnsley and West Riding Junction Railway*, *ub. sup.*; *Ex parte Bradford and District Tramways Co.*, *ub. sup.*; but contrast *In re West Donegal Railway Co.* (1890), 24 Ir. L. T. R. 42, which was not decided under this Act.) Since the passing of this Act persons, who have lent the money to the promoters to enable them to make the deposit, are "creditors" under this sub-section, and entitled to share in the fund *pari passu* with the other creditors (*Ex parte Bradford and District Tramways Co.*, *ub. sup.*); but they have no right to any preferential treatment. (Compare *In re Waterford, Lismore and Fermoy Railway Co.* (1870), I. R. 4 Eq. 490; *In re Dublin, Rathmines and Rathcoole Railway Co.* (1878), 1 L. R. I. 98.)

"Creditors" here will also include solicitors and Parliamentary agents, and other persons who expended labour or money in the promotion of the Bill for the undertaking in question; though, under particular circumstances, where the company never had any existence beyond statutory incorporation, the claim of such persons to rank as "creditors" under this sub-section has been disallowed. (*In re Manchester, Middleton and District Tramways Co.*, [1893] 2 Ch. 638; 62 L. J. Ch. 752; *Muir v. Forman's Trustees*, *ub. sup.*) In *In re Coventry and Nuneaton Tramways Co.* (1888), 4 T. L. R. 458, a case before the passing of this Act, an order was made, on payment out of the deposit, for payment to a Parliamentary agent of money incurred by him for expenses, without which the deposit could not have been made.

(l) Thus, where only a small portion of a company's undertaking,

Sect. 1. the rest of which was a going concern, had been abandoned, the Court required public notice to be given to landowners only and not to all the creditors of the company. (*In re Hull, Barnsley and West Riding Junction Railway* (1893), W. N. 83.)

(*m*) Where a part only of the undertaking has been completed within the prescribed time (Rule XXIII.), or where only a portion of the proposed tramway is authorised (Rule XXIV.), the Court orders a proportionate part of the deposit, as certified by the Board of Trade, to be paid or transferred to the depositors (Rule XXIII.).

(*n*) Apparently, on the principle of *In re Bradford Tramways Co.* (1876), 4 Ch. D. 18; 46 L. J. Ch. 89 (C. A.), which for this purpose still applies, where there was uncalled capital, the depositors would be entitled, subject to the Court's discretion, to have the creditors paid as far as possible out of such uncalled capital, and to receive the balance of the deposit, less only the amount of the debts which such uncalled capital was insufficient to meet.

See further as to Parliamentary deposits, cases in note (*f*), parts (iii.) and (iv.), to Tramways Act, 1870, s. 24.

Power to
cancel bonds.

2. Where in pursuance of any general or special Act of Parliament(*o*) any bond has been given to secure the completion of any undertaking authorised by Parliament, or by any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited in that behalf, the money thereby secured shall be applicable to the same purposes as the deposit fund herein-before mentioned, and the Treasury may, if they think fit, cancel the bond on proof to their satisfaction that the money thereby secured has been applied or is not required for those purposes.

(*o*) There is no provision in Tramways Act, 1870, or the Rules under it, or in Light Railways Act, 1896, or the clauses usually inserted in Light Railway Orders, for the giving of bonds in lieu of deposits.

Application
to Scotland.

3. In the application of this Act to Scotland—

The expression "Paymaster General" shall mean the Queen's and Lord Treasurer's Remembrancer(*p*):

The expression “ High Court ” shall mean the Court of Session in either division thereof. **Sect. 3.**

(p) Compare Rule XX. of the Tramways Rules.

4. In the application of this Act to Ireland—

Application
to Ireland.

The expression “ Paymaster General ” shall mean
the Accountant General of the Supreme Court :

The expression “ tramway ” shall include railway.

5. This Act may be cited as the Parliamentary Short title.
Deposits and Bonds Act, 1892.

THE
CONVEYANCE OF MAILS ACT, 1893.

(56 & 57 Vict. c. 38.)

An Act to make further provision for the Con-
veyance of Her Majesty's Mails.

[24th August, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Differences
as to remun-
eration for
conveyance
of mails.
45 & 46 Vict.
c. 74.

1. Where under any Act relating to the conveyance of mails or under the Post Office (Parcels) Act, 1882, it is provided that any matter of difference relating to any remuneration or compensation to be paid by the Postmaster-General to any railway company shall be referred to arbitration, that matter of difference shall at the instance of any party thereto be referred to the Railway and Canal Commission instead of to arbitration, and that Commission shall determine the same, and this provision shall apply to any matter of difference referred to in section eight of the Post Office (Parcels) Act, 1882, where such railway companies as therein mentioned, or any company or person owning a steam vessel, are or is one party to the arbitration in like manner as it applies to a difference where a single railway company is a party to the arbitration.

Carriage of
mails on
tramways.

2.—(1.) Every tramway company, that is to say, every company, body, or person owning or working (*a*) any tramway (*b*) authorised (*b*) by any Act (*b*) passed

after the first day of January one thousand eight hundred and ninety-three, shall if required by the Postmaster-General, perform with respect to any tramway owned or worked by the company all such reasonable services in regard to the conveyance of mails (*b*) as the Postmaster-General from time to time requires: Provided as follows:—

Sect. 2.

(*a*.) Nothing in this section shall authorise the Postmaster-General to require mails (*b*) in excess of the following weights to be carried in or upon any carriage, that is to say:—

- (i.) If the carriage is conveying or intended to convey passengers, and not goods or parcels, then in excess of the maximum weight for the time being fixed for the luggage of ordinary passengers (*c*); and
- (ii.) If the carriage is conveying or intended to convey parcels only, then in excess of such maximum weight as is for the time being fixed for ordinary parcels (*d*), or if that maximum appears to the Postmaster-General to be so low as to exclude him from availing himself of the use of any such carriage, then as is for the time being fixed by agreement, or in default of agreement by the Railway and Canal Commission (*e*);
- (iii.) If the carriage is conveying or intended to convey both parcels and passengers but not goods, then in excess of the maximum weight for the time being fixed for ordinary parcels, or for the luggage of ordinary passengers, whichever is the greater.

(*b*.) Mails (*b*) when carried in or upon a carriage conveying passengers shall be so carried as not to inconvenience the passengers, but so nevertheless that the custody of the mails by any

Sect. 2.

officer of the Post Office in charge thereof shall not be interfered with.

- (*c.*) Nothing in this section shall authorise the Postmaster-General to require any mails (*b*) to be carried in or upon a carriage conveying or intended to convey passengers but not goods or parcels, except in charge of an officer of the Post Office travelling as a passenger.
- (*d.*) If goods as well as passengers and parcels are carried on the tramway the enactments relating to the conveyance of mails by railway (*f*) shall, subject to the provisions of this section, apply in like manner as if the tramway company were a railway company, and the tramway were a railway.

(2.) The remuneration for any services performed in pursuance of this section shall be such as may be from time to time determined by agreement between the Postmaster-General and the tramway company, or, in default of agreement, by the Railway and Canal Commission (*e*), and this provision shall have effect in lieu of any provisions respecting remuneration contained in the enactments relating to the conveyance of mails by railway (*f*) which are applied by this section.

(3.) For the purpose of this section a requisition by the Postmaster-General may be signified by writing under the hand of any person who is at the time either Postmaster-General or a Secretary or Assistant Secretary of the Post Office, or the Inspector-General of Mails; and any document purporting to be signed by any such person as aforesaid shall, until the contrary is proved, be deemed, without proof of the official character of such person, to have been duly signed as required by this section (*g*).

(*a*) This will include lessees under sect. 19 or licensees under sect. 35 of Tramways Act, 1870.

(*b*) Defined in sect. 5.

(c) For such provision see the model Tramways Order, *post*, p. 440, and the Light Railways Orders, pp. 575, 618. Sect. 2.

(d) Compare the schedule to the model Tramways Order (*post*, p. 446). Similar provisions are applied to light railways of Class B (*post*, p. 633).

(e) This section brings tramways for the first time in any respect within the jurisdiction of the Railway and Canal Commission, and the remarks of Wills, J., to the contrary effect, in *Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357; 61 L. J. M. C. 124, must now be modified to this extent. Another small exception to the accuracy of these remarks will be found in note (o) to Rule XXI. of the Tramways Rules.

(f) That is to say, Railways (Conveyance of Mails) Act, 1838 (1 & 2 Vict. c. 98); Regulation of Railways Act, 1844 (7 & 8 Vict. c. 85), s. 11; Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), ss. 36, 37; Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), ss. 3, 18, 19, 20; and, as to parcels (see sect. 5 below), Post Office (Parcels) Act, 1882 (45 & 46 Vict. c. 74).

(g) Compare Regulation of Railways Act, 1868, s. 37.

3. Every tramroad (*h*) authorised (*h*) by any Act (*h*) passed after the first day of January one thousand eight hundred and ninety-three (*i*) shall, for the purposes of the conveyance of mails (*h*), be deemed to be a railway, and the enactments relating to the conveyance of mails by railway (*k*) shall, subject to the provisions of this Act, apply to every such tramroad and to the company, body, or person owning or working the same as if the tramroad were a railway, and the company, body, or person were a railway company. Carriage of
mails on
tramroads.

(*h*) Defined in sect. 5.

(*i*) Where a tramway authorised before this date is dealt with by a subsequent Act or Order, it is usual to insert a provision that the present Act shall apply to it as though it had been authorised after this date.

(*k*) See note (*f*) to sect. 2.

4. Notwithstanding anything in the Railway and Canal Traffic Act, 1888, any matter of difference directed to be determined by the Railway and Canal Determina-
tion of
differences.
51 & 52 Vict.
c. 25.

Sect. 4. Commission under this Act may in the discretion of the Commission be heard and determined by the two appointed Commissioners, whose order shall be deemed to be the order of the Commission, and subject to this provision all proceedings relating to any such matter of difference shall be conducted by the Commission in the same manner as any other proceeding is conducted by them under the Railway and Canal Traffic Acts, 1873 and 1888, or any Act amending the same, and any order of the Commission upon any such difference shall be enforceable as any other order of the Commission.

Definitions.

5.—(1.) In this Act—

36 & 37 Vict.
c. 48.
45 & 46 Vict.
c. 74.

The expression “mails” has the same meaning as in the Regulation of Railways Act, 1873 (*l*), and includes parcels within the meaning of the Post Office (Parcels) Act, 1882 (*m*):

27 & 28 Vict.
c. 121.

The expression “Act” means any Act of Parliament whether public general, local and personal, or private, and includes any order confirmed by any such Act, and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864 (*n*), and an Order in Council made by the Lord Lieutenant of Ireland under the Tramways (Ireland) Acts, 1860 to 1891, or the Railways (Ireland) Act, 1890:

53 & 54 Vict.
c. 52.

The expression “tramway” means a tramway authorised by an Act to be constructed wholly along public roads or streets without any deviation therefrom (*n*):

The expression “tramroad” means any tramroad or tramway which is not a tramway as herein-before defined (*o*), and includes a tramway or light railway constructed under the Tramways (Ireland) Acts, 1860 to 1891, or the Railways (Ireland) Act, 1890 (*p*).

(2.) A railway, tramway, or tramroad shall be deemed to be authorised by an Act passed after the

first day of January one thousand eight hundred and ninety-three, where the construction of the railway, tramway, or tramroad is first authorised, or where the time for its construction is extended, by an Act passed after the date aforesaid.

(l) See sect. 3, whereby "mails" includes mail-bags and post-letter bags.

(m) See sects. 16, 17.

(n) Thus this Act does not extend to tramways constructed under Tramways (Scotland) Act, 1861, nor light railways of whatever type constructed under a Light Railway Order. But the latter are made subject to the general enactments relating to railways, which would include those relating to the conveyance of mails by railways, unless there be any special provision to the contrary (Light Railways Act, 1896, s. 12), and therefore are placed in a similar position to that in which "tramroads" are placed by sect. 3 of the present Act.

(o) The expression "tramroad" in itself would cover the tramways and light railways mentioned in the last note. But, nevertheless, the Act does not thereby extend to them, for sect. 3, which deals with "tramroads," is confined to "tramroads" authorised by an "Act."

With this use of "tramroad" as a more comprehensive term than "tramway" compare the use of "railroad" as more comprehensive than "railway" in Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16, and Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 7 (2), as to which see *Fletcher v. London United Tramways, Ltd.*, [1902] 2 K. B. 269; 71 L. J. K. B. 653 (C. A.).

(p) Before the passing of the present Act it was held in *Clogher Valley Tramway Co., Ltd. v. R.* (1892), 30 L. R. I. 316, that a steam tramway in Ireland was not a "railway" within Post Office (Parcels) Act, 1882, and therefore not subject to the provisions of that Act.

6. This Act may be cited as the Conveyance of Short title.
Mails Act, 1893.

THE
PRIVATE LEGISLATION PROCEDURE
(SCOTLAND) ACT, 1899.

(62 & 63 Vict. c. 47.)

An Act to provide for improving and extending
the Procedure for obtaining Parliamentary
Powers by way of Provisional Orders in
matters relating to Scotland.

[9th August, 1899.]

BE it enacted by the Queen's most Excellent Majesty,
by and with the advice and consent of the Lords
Spiritual and Temporal, and Commons, in this present
Parliament assembled, and by the authority of the
same, as follows:

Application for Provisional Order.

Sect. 1.
Application
for Pro-
visional
Order.
Notices.

1.—(1.) When any public authority or any persons
(herein-after referred to as the petitioners) desire to
obtain parliamentary powers in regard to any matter
affecting public or private interests in Scotland for
which they are entitled to apply to Parliament by a
petition for leave to bring in a Private Bill, they shall
proceed by presenting a petition to the Secretary for
Scotland, praying him to issue a Provisional Order in
accordance with the terms of a draft Order submitted
to him, or with such modifications as shall be
necessary.

(2.) A printed copy of the draft Order shall be
deposited in the office of the Clerk of the Parliaments
and in the Private Bill Office of the House of

Commons, and also at the office of the Treasury and of such other public departments as shall be prescribed at such time as shall be prescribed (*a*).

Sect. 1.

(3.) Before presenting a petition under the provisions of this Act, the petitioners shall make such deposits and give such notice by public advertisement, and, where land is proposed to be taken, by such service on owners, lessees, and occupiers, as shall be prescribed as sufficient for procedure by way of Provisional Order under this Act (*b*).

(*a*) General Orders 32, 33.

(*b*) General Orders 3 to 38.

2.—(1.) The Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons (in this Act referred to as the Chairmen), shall, if the two Houses of Parliament think fit so to order, determine all matters of practice and procedure which will enable them to take into consideration the draft Order, and to report thereon to the Secretary for Scotland: Provided that with a view to such report the Secretary for Scotland shall forthwith inform the Chairmen of any dissents from or objections to any of the provisions of the Order which have been stated in the prescribed manner and within the prescribed time (*c*).

Report by
Chairmen
that proce-
dure should
be by Private
Bill.

(2.) If it appears from the report of the Chairmen that either of the Chairmen is of opinion that the provisions or some provisions of the draft Order do not relate wholly or mainly to Scotland, or are of such a character or magnitude, or raise any such question of policy or principle, that they ought to be dealt with by Private Bill and not by Provisional Order, the Secretary for Scotland shall, without further inquiry, refuse to issue the Provisional Order, so far as the same is objected to by the Chairmen or Chairman (*cc*).

(3.) A copy of every such report shall as soon as possible be laid before both Houses of Parliament.

Sect. 2.

(4.) If the Secretary for Scotland shall refuse to issue the Provisional Order or part thereof in pursuance of the provisions of this section, the notices published and served and the deposits made for the proposed Provisional Order shall, subject to Standing Orders, be held to have been published and served and made for a Private Bill applying for similar powers: Provided that the petitioners shall, by notice served in the prescribed manner and within the prescribed time, inform all opponents of their intention to proceed by way of Private Bill (*d*), and, subject to Standing Orders, the petition for the Provisional Order shall be deemed and taken to be the petition for leave to bring in a Private Bill, and the petitioners shall also give such additional notices (if any) as shall be required by Standing Orders (*dd*).

(*c*) See 39 S. L. R. 868, for such a report.

(*cc*) See General Order 77.

(*d*) See General Order 3.

(*dd*) See the Standing Orders, *post*, p. 414.

Appointment of and Inquiry by Commissioners.

When inquiry
by Commis-
sioners to be
directed.

3.—(1.) If the Chairmen report that the Provisional Order may proceed, or if a report against a part only of the Order is made by the Chairmen, or either of them, upon due proof to the satisfaction of the examiner of compliance with the general orders herein-after mentioned, the Secretary for Scotland shall take the petition for a Provisional Order into consideration, and subject to the report against any part of the Order (if any), shall, if there is opposition, or in any case in which he thinks inquiry necessary, direct an inquiry as to the propriety of assenting to the prayer of the petition, subject as aforesaid, to be held by Commissioners from time to time appointed in terms of this Act.

(2.) Provided that if the examiner under this Act shall find that the general orders have not been complied with, the petitioners may, in the prescribed manner and within the prescribed time, apply to the

Chairmen to dispense with any general order which has not been complied with, and the decision of the Chairmen shall be final; provided that if any conditions are attached to any dispensation with compliance with any general order, the Provisional Order shall not be proceeded with until the examiner shall have reported that such conditions have been satisfied.

Sect. 3.

4.—(1.) On or before the first day of January next after the commencement of this Act there shall be formed a panel of persons (herein-after referred to as the extra-parliamentary panel) qualified by experience of affairs to act as Commissioners under this Act.

Formation of extra-parliamentary panel.

(2.) The extra-parliamentary panel shall be formed in manner following; that is to say,—

(a.) The Chairmen, acting jointly with the Secretary for Scotland, shall nominate twenty persons qualified as aforesaid, and the persons so nominated shall constitute the extra-parliamentary panel and shall remain thereon until the expiration of five years. Any casual vacancy on the panel caused by death or resignation shall be filled up by the Chairmen acting jointly with the Secretary for Scotland.

(b.) At the expiration of every period of five years, the extra-parliamentary panel shall be re-formed in like manner and with the like incidents.

5.—(1.) When it is determined that Commissioners shall be appointed for the purpose of inquiring as to the propriety of making and issuing a Provisional Order or Orders under this Act, the Chairmen shall appoint four Commissioners for that purpose, and shall at the same time nominate one of the Commissioners as Chairman.

Formation of parliamentary panels.

Appointment of Commissioners.

(2.) Standing Orders may, if the two Houses of Parliament think fit so to order, provide for the formation of panels of members of the two Houses respec-

Sect. 5.

tively to act as Commissioners under this Act (hereinafter referred to as the parliamentary panels).

(3.) Subject to Standing Orders as aforesaid, two of the Commissioners shall be taken from the parliamentary panel of members of the House of Lords, and two shall be taken from the parliamentary panel of members of the House of Commons.

(4.) Subject to Standing Orders as aforesaid, if the Chairmen shall be unable to appoint Commissioners as in the immediately preceding subsection mentioned, three, or if need be all of the Commissioners, may be members of the same parliamentary panel.

(5.) Subject to Standing Orders as aforesaid, if the Chairmen shall be unable to appoint Commissioners as in either of the two immediately preceding subsections mentioned, so many persons as are required to make up the number of Commissioners shall be taken by the Secretary for Scotland from the extra-parliamentary panel herein-before mentioned.

(6.) Any casual vacancy among the Commissioners, or in the office of Chairman of Commissioners caused by death or resignation, or inability to give attendance, such resignation or inability to attend being certified by a writing under the Commissioner's hand, may be filled up by the Secretary for Scotland by appointing a member of any of the panels.

(7.) Notwithstanding a dissolution of Parliament, any member of either House of Parliament may continue to act as Commissioner in any inquiry for the purpose of which he has been appointed to act.

(8.) The persons appointed as Commissioners shall have no personal or local interest in the matter of the proposed Order or Orders, and shall as a condition of such appointment make a declaration to that effect, provided that Scottish Members of either House of Parliament shall neither be disqualified from acting nor preferred as Commissioners to deal with proposed

Orders in which they have no personal or local interest. Sect. 5.

6.—(1.) Commissioners shall hold their inquiry at such place in Scotland as they may determine, with due regard to the subject-matter of the proposed Order and to the locality to which its provisions relate^(e). The sittings shall be held in public.

Sittings of
Commis-
sioners.

(2.) Commissioners shall hear and determine any question of locus standi^(f), but they shall not sustain the locus standi of any person who has not in the prescribed manner and within the prescribed time objected to the proposed Order, unless on special grounds established to the satisfaction of the Commissioners^(g), and subject to such conditions as to payment of costs or otherwise as the Commissioners may determine.

(3.) Subject to general orders any person shall be allowed to appear before the Commissioners in opposition to the Order by himself, his counsel, agent, and witnesses, and counsel, agents, and witnesses may be heard in support of the Order.

(4.) Subject to general orders, whenever a recommendation shall have been made by the Chairmen or by any public department, it shall be referred to the Commissioners who shall notice such recommendation in their report, and shall state their reasons for dissenting, should such recommendation not be agreed to.

(5.) Commissioners shall, as far as possible, sit from day to day until they finish the inquiry and submit their report to the Secretary for Scotland, with the evidence taken and the recommendations made by them, and they may recommend that the Order should be issued as prayed for, or should be issued with modifications, or should be refused, and if they recommend that the Order should be issued with modifications they shall submit a copy of the Order showing the modifications they recommend.

^(e) See a discussion of this matter in *Aberdeen Suburban Tramways Provisional Order* (1902), 39 S. L. R. 873.

Sect. 6.(f) See *ante*, p. 47.

(g) See General Order 79. An instance is to be found in *Arizona Copper Co., Ltd.* (1901), 38 S. L. R. 862. A *locus* was refused in *Glasgow Corporation (Tramways and General)* (1901), 38 S. L. R. 865.

Issue and Confirmation of Provisional Order.

Provision
for unopposed
Orders.

7. If there is no opposition to the Order, or if any opposition thereto has been withdrawn before an inquiry has been held as herein-before provided, the Secretary for Scotland may forthwith make the Order as prayed or with such modifications as shall appear to be necessary having regard to the recommendations of the Chairmen and of the Treasury and such other public departments as shall be prescribed; and thereupon the following provisions shall have effect, that is to say:

- (1.) Before making and issuing an Order, if any modification has been made on the draft Order originally deposited, the Secretary for Scotland shall cause a printed copy thereof to be deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons, and also at the office of the Treasury and of such other public departments as shall be prescribed, and shall not for such time as may be prescribed issue a Provisional Order. Provided that before making and issuing such Order the Secretary for Scotland shall have regard to the recommendations of the Chairmen and of the Treasury and such other public departments as shall be prescribed.
- (2.) No Order so made shall be of any validity unless it has been confirmed by Parliament, and the Secretary for Scotland shall, as soon as conveniently may be, submit such Order to Parliament in a Bill (herein-after referred to as a Confirmation Bill), and such Bill, after introduction, shall be deemed to have passed through

all its stages up to and including Committee, and shall be ordered to be considered in either House as if reported from a Committee. Sect. 7.

When such Bill has been read a third time and passed in the first House of Parliament the like proceedings shall, subject to Standing Orders, be taken in the second House of Parliament.

Any Act passed to confirm such Order shall be deemed to be a public Act of Parliament.

8.—(1.) If—

- (a) there is opposition to the Order, and the opposition has not been withdrawn, or
- (b) the opposition has been withdrawn after inquiry held, or
- (c) although there is no opposition, inquiry has been held,

Provision for
Orders
opposed, or
where inquiry
held.

the Secretary for Scotland shall refuse to issue a Provisional Order if the Commissioners report that the Order should not be made, or if they do not so report he may issue an Order as prayed, or with such modifications as, having regard to the recommendations of the Commissioners, and of the Chairmen and of the Treasury, and such other public departments as shall be prescribed, shall appear to be necessary; but before making and issuing an Order, if any modification has been made on the draft Order originally deposited, the Secretary for Scotland shall cause a printed copy thereof to be deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons, and also at the office of the Treasury, and of such other public departments as shall be prescribed, and shall not for such time as may be prescribed issue a Provisional Order. Provided that before making and issuing such Order the Secretary for Scotland shall have regard to the recommendations of the Chairmen and of the Treasury and such other public departments as shall be prescribed.

Sect. 8.

(2.) It shall be the duty of the petitioners to serve a copy of any Order so issued in the manner and upon the persons prescribed.

(3.) No Order so made shall be of any validity unless it has been confirmed by Parliament, and the Secretary for Scotland shall, as soon as conveniently may be, submit such Order to Parliament in a Bill (herein-after referred to as a Confirmation Bill), and any Act passed to confirm such Order shall be deemed to be a Public Act of Parliament.

Procedure on
Confirmation
Bills.

9.—(1.) If before the expiration of seven days after the introduction of a Confirmation Bill under the immediately preceding section in the House in which it originates a petition be presented against any Order comprised in the Bill, it shall be lawful for any member to give notice that he intends to move that the Bill shall be referred to a Joint Committee of both Houses of Parliament; and in that case such motion may be moved immediately after the Bill is read a second time, and, if carried, then the Bill shall stand referred to a Joint Committee of both Houses of Parliament, and the opponent shall, subject to the practice of Parliament, be allowed to appear and oppose by himself, his counsel, agent, and witnesses; and counsel, agents, and witnesses may be heard in support of the Order. The Joint Committee shall hear and determine any question of *locus standi*.

(2.) The report of the Joint Committee shall, subject to Standing Orders, be laid before both Houses of Parliament.

(3.) The Joint Committee may, by a majority, award costs, and such costs may be taxed and recovered and shall be secured in the manner provided in the Parliamentary Costs Act, 1865, subject to any necessary modifications.

(4.) If no such motion as in subsection (1) of this section mentioned is carried, the Bill shall be deemed

to have passed the stage of Committee, and shall be ordered to be considered as if reported by a Committee. Sect. 9.

When such Bill has been read a third time and passed in the first House of Parliament the like proceedings shall, subject to Standing Orders, be taken in the second House of Parliament.

Supplemental.

10. For the purposes of this Act Commissioners shall have the following powers; that is to say, Examination of witnesses, production of documents, &c.

- (1.) They may summon and examine on oath such witnesses as they think fit to call or allow to appear before them;
- (2.) They may require the production of all books, papers, plans, and documents relating to the matters dealt with in the draft Provisional Order referred to them;
- (3.) They may, when sitting in open court, report to the Lord Ordinary on the Bills any person who has been guilty of contempt of court, and the Lord Ordinary may punish such person as if the contempt had been committed in his own court;
- (4.) Generally the orders of Commissioners may be enforced as if they had been pronounced by the Lord Ordinary on the Bills;
- (5.) The quorum of the Commissioners shall be three; but any order, summons, or warrant may be signed by one Commissioner only; and
- (6.) A chairman of Commissioners shall have a casting as well as a deliberative vote.

11.—(1.) County councils shall have the same powers and be subject to the same restrictions in regard to proceedings under, or in pursuance of this Act, as they Powers of county councils, town councils, &c. under Act.

Sect. 11. now have or are subject to under the provisions of section fifty-six of the Local Government (Scotland) Act, 1889 (*h*), in regard to Private Bills or Confirmation Bills.

(2.) Town councils and burgh commissioners(*hh*) shall have the same powers and be subject to the same restrictions in regard to proceedings under or in pursuance of this Act as they now have or are subject to in regard to Private Bills or Confirmation Bills.

(3.) In addition, any county council, or town council, or burgh commissioners(*hh*) connected with the locality to which any draft Provisional Order referred to Commissioners under this Act relates, may make a report to the Commissioners respecting the provisions of the draft order, and the Commissioners shall consider the recommendations contained in the report.

(*h*) 52 & 53 Vict. c. 50. The section confers on county councils the powers of Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91).

(*hh*) See note (*a*) to Sched. A. of Tramways Act, 1870, *ante*, p. 272.

Officers, &c.
of Com-
missioners.

12. Commissioners from time to time appointed shall have such office accommodation as the Treasury may determine, and the Secretary for Scotland may from time to time, with the consent of the Treasury as to number, appoint or employ such officers, clerks, and messengers as shall be necessary for the purposes of this Act. There shall be paid to each of such officers, clerks, and messengers such remuneration as the Treasury may from time to time determine.

Examiners.

13. There may also be assigned for the purposes of this Act such one or more of the examiners appointed under Standing Orders as the Chairmen may direct. An examiner shall perform under this Act duties analogous to those he now performs under Standing Orders, and shall receive such remuneration for his services as the Treasury shall determine.

14. The travelling and subsistence allowances of the Commissioners and Examiners, together with all other expenses incidental to carrying out this Act, shall be paid out of moneys provided by Parliament.

Sect. 14.

Payment of expenses, &c.

15.—(1.) The Chairmen, acting jointly with the Secretary for Scotland, shall at any time after the passing of this Act and from time to time make, and may vary and alter, such general orders (*i*) as may be requisite for the regulation of proceedings under and in pursuance of this Act, including the fixing, with the consent of the Treasury, a scale of fees to be paid by petitioners and opponents of Provisional Orders. The fees so payable shall be collected and disposed of in such manner as the Treasury may direct.

Provisions for General Orders. Fees.

(2.) Such general orders shall, with a view to the regulation of Provisional Orders, provide for the incorporation (subject to such exceptions and variations as may be mentioned in the Order) with each Provisional Order of such general Acts as would if the Provisional Order were a Private Bill be incorporated therewith according to the ordinary practice of Parliament.

(3.) Every general order purporting to be made in pursuance of this section shall immediately after the making thereof be laid before both Houses of Parliament if Parliament be then sitting, or, if Parliament be not then sitting, within seven days after the next meeting of Parliament; and if either House of Parliament by a resolution passed within one month after such general order has been so laid before the said House, resolve that the whole or any specified part thereof ought not to continue in force, the same or the specified part thereof shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other general order or to anything done before the date of such resolution; but, subject as aforesaid, every general order pur-

Sect. 15. porting to be made in pursuance of this Act shall be deemed to have been duly made and within the powers of the Act, and shall have effect as if it had been enacted in this Act.

(i) See *post*, p. 417.

Savings.

16.—(1.) Nothing contained in this Act shall affect the power of the Secretary for Scotland to make Provisional Orders or other Orders under the provisions of any Act in force at the passing of this Act or the procedure therein specified, save only that, in the case of Provisional Orders which at present require confirmation by Parliament, the provisions of section nine of this Act shall, with the necessary modifications, apply as if they were contained in any Act in force as aforesaid.

(2.) Nothing contained in this Act shall affect the right of any person to apply for or the powers of the Board of Trade or other department to make Provisional or other Orders under the provisions of any Act in force at the passing of this Act or the procedure therein specified or confer upon the Secretary for Scotland power to make Provisional Orders authorising and regulating the supply of electricity for lighting and other purposes (*k*).

(3.) This Act shall not apply to Estate Bills within the meaning of Standing Orders.

(*k*) Thus Scots applications for Provisional Orders under Tramways Act, 1870, may still be made as before. (See *Falkirk and District Tramways* (1901), 38 S. L. R. 863.)

Buildings and
objects of
historical
interest.

17. If any objection to any draft order is made to the Secretary for Scotland on the ground that the undertaking proposed to be authorised by the order will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery, the Secretary for Scotland shall consider such objection, and may, if he thinks fit, refer such objec-

tion to the Commissioners, who shall give to those by whom it is made a proper opportunity of being heard in support of it. Sect. 17.

18. In this Act, unless the subject or context otherwise requires,— Definitions.

The expression “Standing Orders” means the Standing Orders of the House of Lords and the House of Commons respectively :

The expression “general orders” means the general orders made in pursuance of this Act :

The expression “prescribed” means prescribed by the general orders made in pursuance of this Act :

The expression “agent” includes all law agents within the meaning of the Law Agents (Scotland) Act, 1873, and any person entitled to practise as agent according to the practice and rules of either House of Parliament in cases of Private Bills and matters relating thereto. 36 & 37 Vict.
c. 62.

19. This Act shall commence to have effect from and after the end of the session of Parliament next ensuing the passing hereof, and may be cited as the Private Legislation (Procedure) Scotland Act, 1899, and shall apply to Scotland only. Commence-
ment, short
title, and
extent.

BOARD OF TRADE RULES.



THE TRAMWAYS ACT, 1870.

BOARD OF TRADE RULES WITH RESPECT TO PROVISIONAL ORDERS
AND OTHER MATTERS UNDER THE ABOVE-MENTIONED ACT,
WITH COPY OF A PORTION OF THE ACT.

[*These Rules are made under the powers conferred by sect. 64 of Tramways Act, 1870, q.v.*]

Notes.

(1.) *All memorials, objections, and other documents should be on paper of foolscap size.*

(2.) *Promoters who desire to be incorporated must register themselves under the Companies Act, 1862.*

BY WHOM PROVISIONAL ORDERS MAY BE OBTAINED AND THE
NECESSARY CONSENTS THERETO.

By the Tramways Act, 1870, it is provided as follows:—

[*Here the Rules set out the material parts of sect. 4 and the appropriate definitions in sect. 3 of Tramways Act, 1870, together with Sched. A. to that Act. See the notes to those sections and that Schedule, ante. It will be seen that more recent legislation has greatly modified the definitions of local authority and road authority contained in that Schedule.*]

RULES OF THE BOARD OF TRADE.

Approval of
application
made by
local author-
ities.

RULE I.—When the application is made by any local authority, the evidence of approval required as above by Schedule A. (Part III.) of the Act must be given at the time fixed for proving compliance with the Act and these Rules, by (a) a certified copy of the resolution approving of the intention to make the application, (b) a certified copy of the notice convening the special meeting to consider the application, and (c) a certified statement of the number of members constituting the local authority, and of the number present and voting at such special meeting.

RULE II.—Where an application is made by promoters, not being the local authority of the district in which the tramway is proposed to be laid, evidence of the consent required by Part I., section 4 of the Act, must be given at the time fixed for proving compliance with the Act and these Rules, by (a) a certified copy of the resolution passed at a meeting of the local or road authority, as the case may be, at which the application was approved, (b) a copy of the notice convening the meeting, which notice must contain a statement that the subject of the proposed tramway will be brought before the meeting.

Consent to applications not made by local authorities.

Similar evidence of the consent of the local and road authorities must be produced in cases in which the promoters seek to use steam or other mechanical power on any tramway or tramways already authorised (a).

ADVERTISEMENT AND NOTICES IN OCTOBER OR NOVEMBER AND DECEMBER.

[*The Rules here set out sect. 6, sub-sects. (1), (2) and (3) of the Act, and Sched. B. (Part I.)*]

RULE III.—The tramways mentioned in the advertisement of the intended application should be described in the manner prescribed in Rule XVI., but the length need not be inserted.

Description of tramways in advertisement.

RULE IV.—The advertisement must specify at what point or points, and on which side of the street (b) or road, it is proposed to lay such tramway (c), so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches (d) shall intervene between the outside of the footpath (e) on the side of the street or road and the nearest rail of the tramway. The notice shall also specify the gauge (f) to be adopted, and what power it is intended to employ for moving carriages or trucks upon the tramway (g).

Advertisement as to narrow places.

(a) An instance of an arbitration before a Board of Trade referee, as to the conditions on which an authority should admit the use of steam power on tramways, will be found in *In re North London Tramways and Wood Green Local Board* (1889), "Times" Newspaper, June 11.

(b) This word does not occur in the Act, where "road" alone, as defined in sect. 3, occurs. Reference should be made on the subject to notes (c) and (d) to sect. 3 of the Act, and to the discussion on *locus standi* at p. 24, where the meaning of "street" in Standing Order 135 is dealt with.

(c) Sect. 9 of the Act, on the provisions of which the present rule is based, only applies to tramways "in a town," for the meaning of which expression see note (g) to that section, and presumably the rule must be similarly limited.

(d) This provision is an addition to sect. 9, and is intended to meet the greater overhang which is found in the case of railway vehicles.

(e) See note (r) to sect. 9 of the Act.

(f) See sect. 25 of the Act and note (i) thereto.

(g) See sect. 34 of the Act and note (l) thereto. Compare with this rule, Rules IX., XI. and XV. (4).

Street notice.

RULE V.—In the months of October and November, or one of them, immediately preceding the application for any Provisional Order, a notice thereof shall be posted for fourteen consecutive days in every street or road, along which it is proposed to lay the tramway in such manner as the authority having the control of such street or road shall direct; and if after application to such authority no such direction shall be given, then in some conspicuous position in such street or road; and such notice shall also state the place or places at which the plans of such tramway will be deposited (*h*).

Notice to owners and lessees of railways, tramways, and canals.

RULE VI.—On or before the 15th day of December immediately preceding the application for any Provisional Order for laying down a tramway crossing any railway or tramway on the level, or crossing any railway, tramway, or canal by means of a bridge, or otherwise affecting or interfering with such railway, tramway, or canal, notice in writing of such application shall be served upon the owner or reputed owner and upon the lessee or reputed lessee of such railway, tramway, or canal (*i*), and such notice shall state the place or places at which the plans of the tramway to be authorised by such Provisional Order have been or will be deposited (*k*).

Similar notice must also be given to county councils and to proprietors of navigable rivers in respect of their bridges or other works which are proposed to be crossed or otherwise interfered with (*i*).

Every notice under this Rule must be accompanied by a copy of Rule XVII., omitting the first paragraph, and must state where copies of the draft Provisional Order, when deposited at the Board of Trade, can be obtained (*l*).

Notice to local and road authorities.

RULE VII.—Where the promoters make application for an extension of time for the construction of, or for authority to abandon, any tramway (*m*), they must, on or before the 15th day of December, serve notice of such application upon all the local and road authorities affected.

Intimation to intending objectors.

RULE VIII.—The preceding advertisement and notices, other than the street notice, must state that every company, corporation, or person desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter, addressed to the Assistant Secretary of the Railway Department of the Board of Trade, *on or*

(*h*) See Sched. B. (Part II.) of the Act.

(*i*) The objections which such persons may make are governed by sect. 7 of the Act and Rule VIII. See also the discussion of their *locus standi* on tramway Bills, *ante*, pp. 17, 33, 40. By Rule XV. a list of such persons is to be deposited at the Board of Trade on or before Dec. 23.

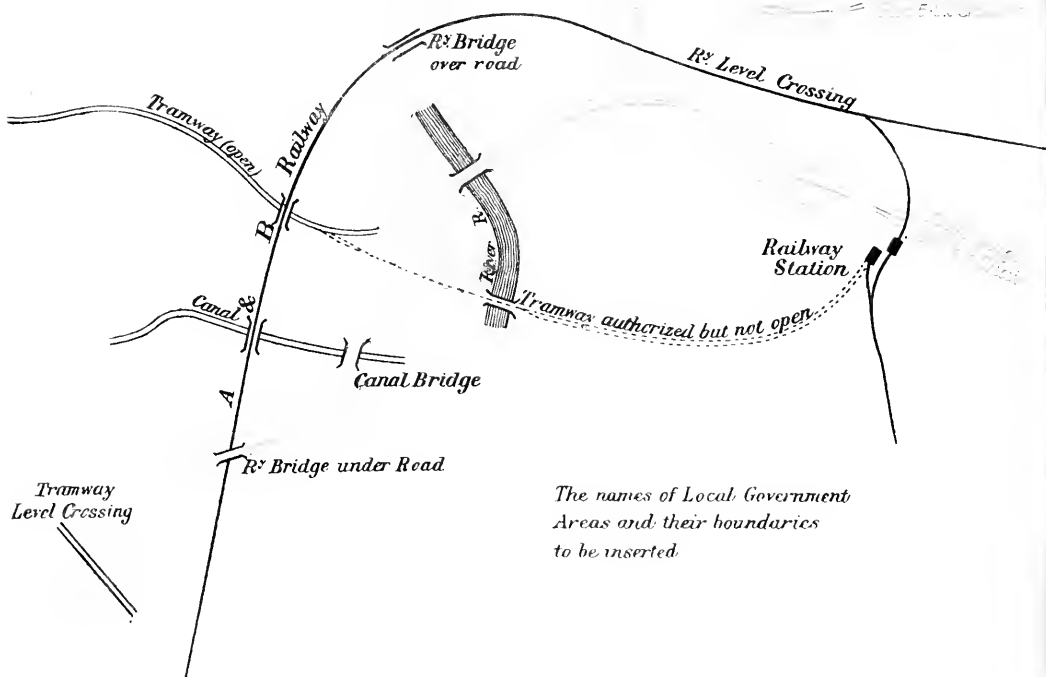
(*k*) See Sched. B. (Part II.) of the Act.

(*l*) See Rule XVI. and Rule XIX. (3).

(*m*) See sects. 16 and 18 of the Act.

Specimen Form of Diagram of Proposed Tramways.

*To be Deposited at the Board of Trade with the Plans
on or before the 30th Nov^r.*



*The names of Local Government
Areas and their boundaries
to be inserted.*

Scale not less than 2 Inches to a Mile.



[To face page 32]

before the 15th January next ensuing; that copies of their objections must at the same time be sent to the promoters; and that in forwarding to the Board of Trade such objections, the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents (*n*).

RULE IX.—On or before the 15th day of December immediately preceding the application for a Provisional Order, notice in writing must be given to the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of any street or road where, for a distance of thirty feet or upwards, it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway. Notice to frontagers.

This notice should be given in respect of such premises on both sides of the road, and must contain a notification that if such owner, lessee, or occupier dissents from the tramway being so laid, he may express his dissent by a statement in writing, addressed to the Assistant Secretary of the Railway Department of the Board of Trade, *on or before the 1st January* next ensuing, and that he must at the same time send a copy of his dissent to the promoters (*o*).

DEPOSITS ON OR BEFORE 30TH NOVEMBER.

[*The Rules here set out Sched. B. (Part II.) of the Act. Sect. 6, sub-sect. 2 of the Act ought also to be cited here, but is not.*]

RULE X.—A published map of the district on a scale of not less than six inches to a mile (or, if no map on such a scale be published, then the best map obtainable), with the line of the proposed tramway marked thereon, and a diagram on a scale of not less than two inches to a mile prepared in accordance with the specimen appended to these Rules, must also be deposited on or before the 30th of November. Map and diagram.

RULE XI.—The plans to be deposited must also comply with the following requirements:— Requirements as to plans.

The plans shall indicate whether it is proposed to lay the tramway along the centre of any street or road, and if not along the centre, then on which side of, and at what distance from, an imaginary line drawn along the centre of such street or road, and whether or not, and if so, at what point or points, it is proposed to lay such tramway, so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run

(*n*) Compare Rule XVI. (6).

(*o*) Compare Rules IV., XI. and XV. (4), and the notes to Rule IV., especially as to the meaning of “street.” The meaning of “abutting upon” is fully discussed in note (*s*) to sect. 9 of the Act.

It should be observed that the present rule, perhaps *per incuriam*, omits any reference to the space of 10 feet 6 inches substituted where railway vehicles are to be used.

thereon carriages or trucks adapted for use upon railways, a less space than ten feet six inches, shall intervene between the outside of the footpath on either side of the street or road and the nearest rail of the tramway (*p*).

All lengths shall be stated on the plan and section in miles, furlongs, chains, and decimals of a chain.

The distances in miles and furlongs from one of the termini of each tramway shall be marked on the plan and section.

Each double portion of tramway, whether a passing-place or otherwise, shall be indicated by a double line.

The total length of the street or road upon which each tramway is to be laid shall be stated (*i.e.*, the length of route of each tramway).

The length of each double and single portion of such tramway, and the total length of such double and single portions respectively, shall also be stated.

In the case of double lines (including passing-places), the distance between the centre lines of each line of tramway shall be marked on the plans. This distance must in all cases be sufficient to leave at least 15 inches between the sides of the widest carriage (*q*) and engines to be used on the tramways when passing one another (*r*).

The gradients of the street or road on which each tramway is to be laid shall be marked on the section.

Every crossing of a railway, tramway, river, or canal shall be shown, specifying in the case of railways and tramways whether they are crossed over, under, or on the level.

All tidal waters shall be coloured blue.

All places, where for a distance of 30 feet and upwards there will be a less space than nine feet six inches between the outside of the footpath on either side of the street or road and the nearest rail of the tramway, shall be indicated by a thick dotted line on the plans on the side or sides of the line of tramway where such narrow places occur, as well as noted on the plans, and the width of the street or road at these places shall also be marked on the plans (*p*).

Note.—The section of each tramway should, where practicable, be shown on the same page as the plan.

RULE XII.—The plans to be deposited with the clerk of the peace (*s*) or sheriff clerk (*t*) (as the case may be) must be in duplicate. (*See* Standing Order of the House of Lords and of the House of Commons (*u*).)

Plans in certain cases to be in duplicate.

(*p*) Compare Rules IV., IX. and XV. (*t*), and the notes to Rule IV., especially as to the meaning of "street."

(*q*) See sect. 25 of the Act and note (*i*), and sect. 34 and note (*m*) thereto.

(*r*) See as to this the Board of Trade Memorandum, *post*, p. 341.

(*s*) See notes (*m*), (*u*), and (*t*) to Sched. B. to the Act.

(*t*) See note (*p*) to Sched. B. to the Act.

(*u*) See Rule XIV.

RULE XIII.—In cases where the proposed works are intended to be made in or through one or more parishes or districts, the deposit with the parish clerks (*x*) or local authorities need consist only of a copy of so much of the plans and sections as relates to their respective parishes or districts.

Portions only of plans required in certain cases.

RULE XIV.—The following Standing Orders must also be complied with (*y*) :—

Plans, &c. to be deposited in Parliament.

Standing Order of the House of Lords.

[39.] “ *Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department or county council for a Provisional Order or Certificate, duplicates of the said documents shall at the same time be deposited in the office of the Clerk of the Parliaments, provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament and before the thirtieth day of November in any year, such duplicates shall be so deposited on or before the thirtieth day of November.*”

Standing Order of the House of Commons.

[39.] “ *Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department or county council for a Provisional Order or Provisional Certificate, duplicates of the said documents shall at the same time be deposited in the Private Bill Office, provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the thirtieth day of November in any year, such duplicates shall be so deposited on the thirtieth day of November.*”

DEPOSITS ON OR BEFORE 23RD DECEMBER.

[*The Rules here set out Sched. B. (Part III.) of the Act. Sect. 6 (3) of the Act should also be cited.*]

RULE XV.—The following documents, &c., must also be deposited at the Board of Trade on or before the 23rd December, viz. :—

(1.) A complete list of every railway, tramway and canal proposed to be crossed or otherwise affected or interfered with, together with the names and addresses of the owners or reputed owners, and of the lessees or reputed lessees thereof, and a certified copy of the notice served upon them (*z*).

List of railways, tramways, and canals, and copy of the notice.

(*x*) See note (*u*) to Sched. B. to the Act.

(*y*) These Standing Orders refer to *amended* as well as to original plans.

(*z*) Compare Rule VI.

Lists of local and road authorities and copy of notice.

(2.) A complete list of the local and of the road authorities through whose districts the proposed tramway is to pass (including in such list the clerk to the county council in cases where it is proposed to cross county bridges (*z*)), and if any such district is or forms part of a highway district, under the provisions of the Highway Acts (*a*), a statement to that effect must accompany the deposit. Also a separate list of the local and road authorities affected by any application relating to the use of steam or other mechanical power on authorised tramways, or to an extension of time or abandonment; together with a copy of any notice served under Rule VII.

Copy of street notice.

(3.) A certified copy of the notice which is required by Rule V. to be posted in the streets in October or November next before the application.

List of frontagers and copy of notice.

(4.) In all cases where for a distance of 30 feet or upwards it is proposed that a less space than nine feet six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, or a less space than ten feet six inches if it is intended to run on the tramway carriages or trucks adapted for use upon railways, a complete list of the owners or reputed owners, lessees or reputed lessees, and occupiers of all houses, shops, or warehouses abutting upon any part of the highway, where such less space is proposed, together with a certified copy of the notice which was served on them on or before the 15th December, as required by Rule IX. (*b*). (The list should be so prepared as to show distinctly and separately every length of street or road where for a distance of 30 feet or upwards such less space is proposed and in respect of every such length of street or road it should indicate in parallel columns the name of the street, the name or number of the house, shop, or warehouse, and the names of the owner or reputed owner, the lessee or reputed lessee, and of the occupier.)

Description of land.

(5.) A description of the land (if any) which the promoters propose to purchase for the construction of the tramway. (The contracts for the purchase of all the lands required must be produced at the time of proving compliance with the Act and these Rules (*c*).)

Memorandum of association, &c.

(6.) A list of every Provisional Order or Act of Parliament (if any) of the promoters; and where the promoters are a company incorporated under the Companies Act, 1862, a printed copy of the memorandum of association, articles of association, and any registered special resolution of the company, and in the case of a

(*z*) Compare Rule VI.

(*a*) As to highway districts, see note (*n*) to sect. 4 of the Act.

(*b*) Compare Rules IV., IX. and XI., and the notes to the two former rules.

(*c*) Compulsory purchase is excluded by sect. 15 of the Act.

company incorporated in any other manner, a copy of every deed or instrument of settlement or incorporation.

(7.) A fee of 35*l.*, by cheque payable to "An Assistant Secretary Fee. of the Board of Trade." (This fee will not necessarily be taken to cover the cost of inquiries or other matters arising out of the application. With respect to costs in such matters, security must be given from time to time by the promoters as the Board of Trade may require.)

DRAFT PROVISIONAL ORDER.

RULE XVI.—The following rules must be observed in regard to the draft Provisional Order : Form of draft Provisional Order.

(1.) The draft Provisional Order must be deposited in triplicate and be printed on *one side only of the page*, so as to leave the back of the page blank, and any schedule annexed must begin a new page.

(2.) The draft Provisional Order must describe where each tramway is to commence and terminate, and must state the streets and roads along which it is to pass, and the total length of the double and single portions respectively of such tramway in miles, furlongs, chains, and decimals of a chain.

(3.) Each double and single portion of such tramway, with its commencement and termination, must also be described. (This can be done by stating that each line or branch line will be double or single throughout, except at certain specified places where it will be single or double.)

(4.) Every passing-place must be described as a double line in accordance with the Standing Order of the House of Lords (*d*), which provides that "*two lines of tramway running side by side shall be described as a double line.*"

(5.) In cases where the promoters are individuals their addresses as well as names should be inserted in the draft Order.

(6.) The names and addresses of the agents for the Provisional Order must be printed on the outside of the draft Order, and there must be a notice at the end of it stating that objections are to be addressed to the Assistant Secretary of the Railway Department of the Board of Trade on or before the 15th January next ensuing, that copies of objections must at the same time be sent to the promoters, and that in forwarding to the Board of Trade such objections, the objectors or their agents should state that a copy of the same has been sent to the promoters or their agents (*e*).

(*d*) Standing Order 131.

(*e*) Compare Rule VIII.

PROOFS OF COMPLIANCE WITH THE ACT AND RULES.

Proofs of
compliance
with Act and
Rules.

RULE XVII.—The agents should be prepared to prove compliance with the provisions of the Act and these Rules by the *15th January*, and all such proofs must be completed on or before the *22nd February*. Six days' notice will be given of the day and hour at which the agents are to attend for the purpose at the Board of Trade, and printed forms of proof (*f*) will accompany the notice. These forms should be filled up by the agents, and brought with the requisite documents to the Department at the time fixed for proving compliance.

If any local or road authority, or any railway, tramway, or canal company, or any other company, body, or person desire to have any clauses or other amendments inserted in the Order, they must deliver the same to the agents for the Order, and also to the Board of Trade, not later than the *8th February*.

On or before the *22nd February* the agents must deposit at the Board of Trade a filled up draft printed Order (in duplicate) containing in manuscript all such clauses or other amendments as have been agreed upon.

If any of the clauses or other amendments which have been delivered to the agents are not settled with the consent of both parties the agents must, so far as they can, on or before the *22nd February*, show what are the amendments, if any, which each party would be willing to accept.

After the *22nd February* no further proposals for clauses will be entertained by the Board of Trade.

DEPOSIT AND ADVERTISEMENT OF ORDER AS MADE.

[*The Rules here set out sect. 13 of the Act, and the provision of sect. 14 that the Order as made shall be deposited and advertised not later than April 25, and Sched. B. (Part IV.). Further provisions as to the advertisement will be found in Rule XIX. (2).]*

Deposit of
amended plan
and section.

RULE XVIII.—Should any alteration of the plan and section originally deposited for the purposes of the Order be made, with the approval of the Board of Trade, before the Order is granted, a copy of such plan and section (or of so much thereof as may be necessary), showing such alteration, must, before the Order is introduced into a Confirmation Bill, be deposited by the promoters for public inspection :—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish, and the office of the local authority of every district, affected by such alteration; and

(*f*) These will be found *post*, p. 342.

In Scotland, in the office of the principal sheriff clerk for every county, district, or division affected by such alteration (*g*).

Copies of such documents are at the same time to be deposited at the office of the Board of Trade, in the office of the clerk of the Parliaments and at the Private Bill Office.

RULE XIX.—When a Provisional Order has been made, and before it is introduced into the Confirmation Bill, the promoters will be required to submit to the Board of Trade the following proofs, viz.:—

Proofs of deposit and advertisement of Order as made.

(1.) The receipt of the clerk of the peace or sheriff clerk (*h*), or proof by affidavit of the deposit of the Order with such officer as required by Part IV. of Schedule B. to the Act.

(2.) A copy of the local newspaper containing the advertisement of the Order. This advertisement must have a short heading stating that the Order has been made by the Board of Trade under the Tramways Act, 1870, previous to its being introduced into a Confirmation Bill, and must also state the name of the office where printed copies of the Order can be obtained.

(3.) Proof must also be given that the advertised Order is a correct copy of the Order delivered by the Board of Trade to be advertised, that it was inserted in the newspaper in which the original advertisement of the application for the Order was published, and that a sufficient number of printed copies of the Order were deposited for sale at the office named in the original advertisement, with a statement of the price for which they may be obtained.

(4.) Receipts or proof by affidavit of the deposit of amended plans as required by Rule XVIII.

Printed forms for these proofs (*i*) will be furnished by the Board of Trade when the Order is sent to the promoters to be advertised, and one of these forms must be filled up by the promoters, and brought or forwarded to the Department with the requisite documents *as soon as possible* after the advertisement and deposit have been made.

DEPOSIT OF MONEY, PENALTY FOR NON-COMPLETION OF TRAMWAYS, AND RELEASE OF DEPOSIT.

RULE XX.—After the Provisional Order is ready, and before the same is introduced by the Board of Trade into a confirming Bill (*k*), the promoters (unless they are a local authority), shall, if they are not possessed of a tramway already open for public traffic, which

Deposit of money in the Chancery Division under section 12 of Act.

g For the appropriate officials, &c. in the present state of the law, see notes (*m*) to (*p*) inclusive to Sched. B. to the Act.

h As to these officers, see notes (*m*), (*p*) and (*t*) to Sched. B. to the Act.

i These will be found *post*, p. 350.

k The words in sect. 12 of the Act are: "Before the same is delivered by the Board of Trade."

has during the year last paid dividends on their ordinary share capital (*l*), pay as a deposit a sum of money not less than five per centum (*m*) on the amount of the estimate of the expense of the construction of the tramway, as follows; namely,

Where the tramway or any part thereof will be situate in England (*n*),—to the account of the Paymaster General for and on behalf of the Supreme Court of Judicature in England to the credit of the particular tramway:

Where the tramway will be situate wholly in Scotland,—either to the account of the Paymaster General for and on behalf of the Supreme Court of Judicature in England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by Act of Parliament or Royal Charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland *ex parte* the particular tramway.

The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the *persons* therein named, not exceeding five in number, or the majority or survivors of them, to pay the money therein mentioned to the account of the Paymaster General for and on behalf of the Supreme Court of Judicature in England or into the bank therein mentioned, in the name and with the privity of the officer therein mentioned, if any, and for that officer to issue directions to such bank to receive the same, to be placed to his account there according to the method (prescribed by statute, or general rules or orders of court or otherwise), for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective courts is for the time being permitted to be invested, or of exchequer bills (*m*) (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase); and in that case the Board of Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks, funds, securities, or exchequer bills by the persons therein named.

Where money is so paid into the Supreme Court of Judicature, the

(*l*) This exception is not to be found in sect. 12. In this case a penalty in lieu of a deposit is provided for by Rule XXI.

(*m*) Not less than four per cent., in sect. 12 of the Act.

(*n*) Includes Wales and Berwick-upon-Tweed. (Wales and Berwick Act, 1746 (20 Geo. 2, c. 42), s. 3.)

(*m*) Bank annuities are now extinct. Court investments are now governed by R. S. C., O. 22, r. 17.

Court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the Court thinks fit.

In the subsequent provisions of these Rules, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or exchequer bills transferred or deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorising the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

RULE XXI.—If the promoters empowered by the Order to make the tramway are possessed of a tramway already opened for public traffic, and which has during the year last past paid dividends on their ordinary share capital, no deposit will be required; but if such promoters (unless they are a local authority) do not, within the time in the Order prescribed, or within the time as prolonged by the special direction of the Board of Trade under section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the Order, complete the tramway authorised by the Order, they will be liable to a penalty of 50*l.* a day for every day after the expiration of the period so limited, until the said tramway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works; and the said penalty may be applied for by any road authority claiming to be compensated in accordance with the provisions of Rule XXII., and in the same manner as the penalty provided in the third section of the Act 17 & 18 Vict. c. 31, known as the Railway and Canal Traffic Act, 1854(*o*), and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such Court or Judge as is specified in the said third section of the Act 17 & 18 Vict. c. 31(*o*), to an account opened or to be opened in the name and with the privity of the Paymaster General for and on behalf of the Supreme Court of Judicature in England [the Queen's Remembrancer of the Court of Exchequer in Scotland,

Penalty for non-completion of tramways.

(*o*) By this section application may be made in a summary way by motion or summons, in England to the Court of Common Pleas at Westminster (now the High Court of Justice by Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16), or in Scotland to the Court of Session. By Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 6, jurisdiction under sect. 3 of Railway and Canal Traffic Act, 1854, is given to the Railway Commissioners (now the Railway and Canal Commission by Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 8), and the Courts and Judges therein named shall, except for the purpose of enforcing any decision or Order of the Commissioners, cease to exercise the jurisdiction conferred upon them by that section. Therefore it appears that applications under the present Rule ought now to be made to the Railway and Canal Commission.

(according as the tramway is situate in England (*p*) or Scotland)], in the bank named in such Order, and shall not be paid thereout, except as provided by Rule XXII., but no penalty will accrue in respect of any time during which it shall appear, by a certificate to be obtained from the Board of Trade, that the promoters were prevented from completing or opening such tramway by unforeseen accident or circumstances beyond their control; Provided, that the want of sufficient funds will not be held to be a circumstance beyond their control (*q*).

Application
of deposit.

RULE XXII. (*r*).—If the promoters empowered by the Order to make the tramway do not within the time in the Order prescribed, or within the time as prolonged by the special direction of the Board of Trade under section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the Order, complete the tramway, and open it for public traffic (*s*), then and in every such case the deposit fund, or so much thereof as shall not have been repaid to the depositors (or any sum of money recovered by way of such penalty as aforesaid), shall be applicable, and after due notice in the London or Edinburgh Gazette, as the case may require, shall be applied towards compensating all road authorities for the expense incurred by them in taking up any tramway or materials connected therewith placed by the promoters in or on any road vested in or maintainable by such road authorities respectively, and in making good all damage caused to such roads by the construction or abandonment of such tramway, and for which expense or damage no compensation or inadequate compensation shall have been paid (*t*), and shall be distributed in satisfaction of such compensation in such manner and in such proportions as to the Supreme Court of Judicature in England, or Court of Exchequer in Scotland, as the case may be, may seem fit; and if no such compensation shall be payable, or if a portion of the said deposit fund (or of the sum or sums of money recovered by way of penalty aforesaid) shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said deposit fund (or the sum or sums of money recovered by way of penalty aforesaid), or such portion of it as may not be required as aforesaid shall in the discretion of the Court if the promoters

(*p*) See note (*n*) to Rule XX.

(*q*) Compare sect. 41 of the Act.

(*r*) This Rule conforms substantially to the provisions of Parliamentary Deposits and Bonds Act, 1892, s. 1 (*ante*, p. 297), with the omission of the provision for the compensation of landowners. The decisions on that Act and this Rule are fully discussed in the notes to that Act. Attention must be paid to the terms of the Act, as it applies notwithstanding anything in any general or special Act or rules.

(*s*) As to the evidence of this, see note (*b*) to sect. 1 of Parliamentary Deposits and Bonds Act, 1892.

(*t*) As in *In re Colchester Tramways Co.*, [1893] 1 Ch. 309; 62 L. J. Ch. 243.

are a company and a receiver has been appointed, or if such company is insolvent and has been ordered to be wound up be paid or transferred to such receiver, or to the liquidator or liquidators of the company (*u*), or be applied in the discretion of the Court as part of the assets of the company, for the benefit of the creditors thereof (*x*). Subject to such application as aforesaid, the deposit fund may be repaid or retransferred to the depositors or as they shall direct (*y*).

RULE XXIII.—The Court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid or transferred to the applicants, or as they shall direct, if, within the time by the Order prescribed, or within the time prolonged by the special direction of the Board of Trade under section 18 of the Tramways Act, 1870, and if none is prescribed, or if the time has not been prolonged as aforesaid, then within two years from the passing of the Act confirming the Order, the promoters thereby empowered to make the tramway, complete it, and open it for public traffic after inspection by an inspector appointed by the Board of Trade, and upon a certificate of the Board of Trade that the tramway is fit for public traffic, as provided by Rule XXV.: Provided, that if within such time as aforesaid any portion of a line of tramway authorised by an Order is opened for public traffic, after such inspection as aforesaid, and on such certificate under Rule XXV. as aforesaid, then on the production of a certificate of the Board of Trade, specifying the length of the portion of the tramway opened as aforesaid, and the portion of the deposit fund which bears to the whole of the deposit fund the same proportion as the length of the tramway so opened bears to the entire length of the tramway authorised by the Order the Court in which the deposit is made shall, on the application of the depositors, order the said portion of the deposit fund so specified in such certificate as aforesaid to be paid or transferred to them, or as they shall direct.

Release of
deposit.

RULE XXIV.—The depositors shall be entitled to receive payment of any interest or dividends from time to time accruing on the deposit fund while in Court; and the Court in which the deposit is made may from time to time, on the application of the depositors, make such Order as seems fit respecting the payment of the interest or dividends accordingly.

Miscellaneous
as to deposits.

If either House of Parliament refuse to confirm any Provisional Order in respect whereof a deposit has been made under these Rules, or authorise a portion only of any tramway comprised in such Order, or if any such Provisional Order be withdrawn before the same is confirmed by Parliament, the Court shall, upon produc-

(*u*) See note (*i*) to sect. 1 of Parliamentary Deposits and Bonds Act, 1892.

(*x*) See note (*k*) to the same.

(*y*) See note (*g*) to the same.

tion of a certificate of the Board of Trade, order the deposit fund, or a proportionate part thereof, as the case may be, to be paid to the depositors, or as they shall direct.

The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

Any application under these Rules to the Supreme Court of Judicature shall be made in a summary manner by summons at Chambers (z).

OPENING OF TRAMWAYS.

Opening of
tramways.

RULE XXV.—The promoters shall give to the Board of Trade at least 14 days' notice in writing of their intention to open any tramway, or portion of a tramway, and such tramway or portion of tramway shall not be opened for public traffic until an inspector appointed by the Board of Trade has inspected the same, and the Board of Trade has certified that it is fit for such traffic (a). The above-mentioned notice should be accompanied by the following documents, viz.:

(1.) A copy of the Act or Provisional Order authorising the construction of the tramways.

(2.) A copy or tracing of so much of the deposited plans and sections as relates to the portion of tramway proposed to be opened, distinguishing between double (b) and single line, and showing in red ink any variations therefrom in the tramways as constructed.

(3.) A list of the local and road authorities concerned.

(4.) A diagram of the lines submitted for inspection, on a scale of about two inches to a mile.

BOARD OF TRADE RULES WITH RESPECT TO THE PROLONGATION OF TIME FOR THE COMMENCEMENT OR COMPLETION OF WORKS.

Prolongation
of time for
commence-
ment or com-
pletion of
works.

The Board of Trade, under the powers conferred upon them by section 18 of the Tramways Act, 1870, have made the following Rules with respect to applications for a prolongation of time for the commencement or the completion of the works authorised by any Order made under the above-named Act (c):—

1. The application should be in the form of a memorial setting

(z) See note (o) to Rule XXI.

(a) See sect. 25 of the Act and note (m) thereto.

(b) Including passing-places (Rule XI.).

(c) See notes (z) and (a) to sect. 18 of the Act.

forth the grounds on which the application is made, and must be made *at least one month before* the expiration of the time prescribed for the commencement or the completion of the works, as the case may be.

2. The promoters of any tramway undertaking authorised by any Order, who intend to apply to the Board of Trade for a prolongation of the time limited for the commencement or the completion of the works authorised by such Order, shall publish by advertisement, once at least in each of two successive weeks, in some one and the same newspaper published in the district affected by such Order, a notice of their intention to apply to the Board of Trade for a prolongation of time.

3. The notice must state the period to which it is proposed to prolong the time limited for the commencement or the completion of the works, as the case may be, and must contain a notification that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Assistant Secretary (Railway Department), Board of Trade, on or before a day to be named in the advertisement, being not less than 21 days from the date of the first publication of the advertisement, and that copies of their representations or objections should at the same time be sent to the promoters.

4. A similar notice must be delivered to every local and road authority *before* the second publication of the notice. Copies of newspapers containing the notice, and a statement that a copy of it has been duly served on the local and road authorities as required by these Rules, must be sent to the Board of Trade with the application.

5. Before the Board of Trade comply with the application, they will impose such conditions (if any) as they think fit.

COURTENAY BOYLE.

Board of Trade (Railway Department),
January 1892.

TRAMWAYS.

REQUIREMENTS, *in cases of Application to the Board of Trade, for their Approval of the Plan and Statement relating to the Rail and Substructure of a Tramway.*

There should be forwarded to the Board of Trade :—

1. A drawing (in duplicate), consisting of a full-sized section of the proposed rail; and a full-sized plan and elevation of the same, extending for about nine inches on each side of the joint, and showing how the joint is proposed to be secured, and the electrical bonding.

There should be a statement on the drawing of the material, weight, and length of the proposed rail and fish-plates, and of the depth and width of the groove; also whether the Tramway is to be worked by mechanical power.

2. A drawing, on a scale of two inches to the foot (in duplicate), consisting of a plan, cross section, and longitudinal section of the permanent way and substructure of the tramway, and showing the mode of fixing the rails and chairs (if any), and the gauge ties (if any).

There should be a statement on this drawing of the nature of the paving proposed to be adopted between the rails, and for a distance of eighteen inches on the outside of the rails.

There should also be on this drawing a plan, on a scale of one inch to the foot, of the points proposed to be employed at single line passing places and junctions.

The drawings in each case should be on tracing linen.

3. The names and addresses of the Road Authorities, with a copy of the under-mentioned notice endorsed with the date and manner of service.

4. Tracings of the above drawings should also be served upon the Road Authorities, with a notice that any objections or representations may be brought before the Board of Trade within ten days from the date of such service.

THE BOARD OF TRADE,
(Railway Department),
Whitehall Gardens.

TRAMWAYS.



BOARD OF TRADE MEMORANDUM ON CERTAIN MATTERS.

Clearance.

The space between the inner rails of a double line must to some extent depend upon the overhang of the cars. It is, however, necessary that there should be at least 15 inches between the sides of passing cars, and also a similar space between the side of a car and any standing work such as lamp posts, telegraph posts, trolley wire standards (including centre standards for electrical traction) in a street.

The space between the kerb and the nearest rail depends to a great extent on what is shown on the plans deposited when lines were authorised.

On straight roads a minimum distance of 18 inches between the side of the car and the kerb is desirable, but in exceptional cases a distance of 15 inches might be allowed for short lengths. On curves a greater space would be required in order to allow for the overhang of the car platform.

Where central poles are used for electric traction any stone kerbing should not be left wide enough at the sides facing the rails to enable any person to stand upon it as a refuge.

Rails.

For mechanical traction it is generally considered that the weight of rails should not be less than 90 lbs. per yard, 100 lbs. being preferred.

The groove of the rail should not exceed *one inch* in width.

BOARD OF TRADE,

November, 1900.

FORMS OF PROOFS

OF COMPLIANCE WITH THE TRAMWAYS ACT AND RULES.

I.—PROOFS

Required by the Board of Trade of compliance with the provisions of the Tramways Act, 1870, and the Rules made by the Board of Trade under the powers of the Act *with respect to applications for Provisional Orders.*

I. Name of Provisional Order.

II. Name of Promoters.

NOTES—

1. *The particulars not applicable should be struck out and marked accordingly.*

2. *Proof must be given in the manner specified in the margin.*

3. *Statutory declarations must be stamped.*

Advertisement and Notices in October or November and December.

Tramways
Act, 1870.
Sect. 6 (1).

III. ————— will prove the publication in October or November in the following newspapers; viz., The Gazette of the ——— and the ——— of the ——— of the notice, which is prescribed by Schedule B., Part I., to the Act, of the intention of the promoters to apply for a Provisional Order, and, (if not already furnished,) will produce a copy of the Gazette and newspaper containing the notice.

Personally by production of the documents.

Schedule
B. (Part I.)

IV. ————— will prove :

By affidavit or statutory declaration.

1. That the published notices are copies of each other, and that they state the objects of the intended application :
2. That the notices give a general description of the nature of the proposed works, if any :
3. That the notices contain the names of all the townlands, parishes, townships, and extra-parochial places in which the proposed works (if any) will be made :
4. That the notices state the times and places at which the deposit under Part II. of the said schedule was made :

5. That the notices state the office, either in London or at the places to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and the Provisional Order, when made, will be obtainable.

By affidavit or statutory declaration, or personally.

V. ————— will prove that the whole notice was included in one advertisement, headed with a short title descriptive of the undertaking.

VI. ————— will prove that the advertisement was inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking where the proposed works (if any) will be made ; or (as the case may be)

By affidavit or statutory declaration.

VII. ————— will prove that there is no newspaper published in the district affected by the proposed undertaking where the proposed works (if any) will be made, and that the advertisement was inserted once at least in each of two successive weeks in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate.

By affidavit or statutory declaration, or personally.

VIII. ————— will prove that the tramways mentioned in the advertisement are described in the manner prescribed in Rule XVI. of the Board of Trade Rules. Rule 3.

By affidavit or statutory declaration.

IX. ————— will prove that the advertisement describes the several places where for a distance of 30 feet or upwards a less space than 9 feet 6 inches, or if it is intended to run carriages or trucks adapted for use upon railways a less space than 10 feet 6 inches, is proposed between the outside of the footpath on either side of the road and the nearest rail ; and that the advertisement also states the proposed gauge and what power it is intended to employ for moving carriages or trucks upon the tramway. Rule 4.

X. ————— will prove that the notice posted in the street or streets along which it is proposed to lay any street tramway was posted in the manner directed by the authority having the control of such street or streets, for 14 consecutive days in the months of October and November, or one of them, and if no such direction had been given that it was posted in a conspicuous place, and that such notice stated the places at which plans would be deposited. Rule 5.

By affidavit or statutory declaration, or personally.

XI. ————— will prove the service on or before the 15th December of the notice required to be served upon the owner or reputed owner, and upon the lessee or reputed lessee of every railway or tramway which it is proposed to cross on the level, and of every railway, tramway, or canal which it is proposed to cross by means of a bridge, or otherwise to affect or interfere with and upon the county councils and the pro- Rule 6.

prietors of every navigable river in respect of their bridges or other works which are proposed to be crossed or otherwise interfered with; that such notice stated the place or places at which the plans of the proposed tramway had been or would be deposited, and also stated the place or places where copies of the draft Provisional Order when deposited at the Board of Trade could be obtained; and that such notice was accompanied by a copy of the following Rule of the Board of Trade, viz.:—"If any local or road authority, railway, tramway, or canal company, or any other company, body, or person, desires to have any clauses or other amendments inserted in the Order, they must deliver the same to the agents for the Order, and also to the Board of Trade, on or before *the 8th February.*"

"On or before *the 22nd February* the agents must give to the Board of Trade a filled-up draft printed Order (in duplicate) containing, in manuscript, all such clauses or other amendments as have been agreed upon."

"If any of the clauses or other amendments which have been delivered to the agents are not settled with the consent of both parties, the agents must, as far as they can, on or before the 22nd February, show what are the amendments, if any, which each party would be willing to accept."

"After the 22nd February no further proposals for clauses will be entertained by the Board of Trade."

Rule 7.

XII. ————— will prove the service on or before the 15th December of the notice required to be served upon every local or road authority affected by any application relating to an extension of time for the construction of, or for authority to abandon any tramway. *By affidavit or statutory declaration, or personally.*

Rule 8.

XIII. ————— will prove that the preceding advertisement and notices, other than the street notices, state that any objections may be brought before the Board of Trade on or before the 15th January, that a copy of the objections must at the same time be sent to the promoters, and that in forwarding such objections to the Board of Trade it should be stated that a copy has been sent to the promoters.

Rule 9.

XIV. ————— will prove the service on or before the 15th December on all the persons mentioned in the list of frontagers deposited at the Board of Trade on or before the 23rd December, of the notice required to be served upon all the owners, reputed owners, lessees, reputed lessees and occupiers of all houses, shops, or warehouses abutting upon any part of the highway, where for a distance of 30 feet or upwards it is proposed that a less space than 9 feet 6 inches, or a less space than 10 feet 6 inches if it is intended to run on the tramway carriages or trucks adapted for use on railways, *By affidavit or statutory declaration.*

shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway, containing a notification that they may express their dissent in writing to the Board of Trade on or before the 1st January next ensuing, and that a copy of such dissent must at the same time be sent to the promoters.

XV. ——— will prove that the said list contains the names of all owners, reputed owners, lessees, reputed lessees, and occupiers of houses, shops, or warehouses abutting upon any part of the highway where for a distance of 30 feet or upwards it is proposed that a less space than 9 feet 6 inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway.

Deposits on or before 30th November.

By affidavit or statutory declaration, or personally by production of the receipts.

XVI. ——— will prove that the promoters did on or before 30th November 190 deposit for public inspection :— Sect. 6.
Schedule B.
(Part II.)

a. (*If in England.*) At the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish, and the office of the local authority of every district, in or through which any such undertaking is proposed to be made ;

b. (*If in Scotland.*) At the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made ;

The following documents ; that is to say, —

- (1.) A copy of the advertisement published by them :
- (2.) A proper plan and section of the proposed works [or so much thereof as relates to the respective parishes or districts of the local authorities], and, as regards the deposit with the clerk of the peace, a duplicate thereof.

By affidavit or statutory declaration, or personally.

XVII. ——— will prove that a copy of each of the documents aforesaid was also deposited at the office of the Board of Trade. Sect. 6.
Schedule B.
(Part II.)

XVIII. ——— will prove that the promoters did on or before the 30th November 190 deposit at the Board of Trade a published map of the district on a scale of not less than six inches to a mile, or if there was no map on such a scale published, that they deposited the best map obtainable, with the line of the proposed tramway marked thereon, and a diagram on a scale of not less than two inches to a mile prepared in accordance with the specimen appended to the Rules of the Board of Trade. Rule 10.

By affidavit or statutory declaration.

XIX. ——— will prove : Rule 11.
(1.) That the said plan indicates whether it is proposed

to lay the tramway along the centre of any street, *ration of the Engineer.* and if not along the centre, then on which side of the street, and at what distance from an imaginary line drawn along the centre of the street, and at what points it is proposed that for a distance of 30 feet or upwards a less space than 9 feet 6 inches, or if it is intended to use thereon carriages or trucks adapted for use on railways a less space than 10 feet 6 inches, shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway :

- (2.) That all lengths are stated on the plan and section in miles, furlongs, chains, and decimals of a chain :
- (3.) That the distances in miles and furlongs from one of the termini of each tramway are marked on the plan and section :
- (4.) That each double portion of tramway, whether a passing-place or otherwise, is indicated by a double line :
- (5.) That the total length of the road upon which each tramway is to be laid is stated :
- (6.) That the length of each double and single portion of such tramway, and the total length of such double and single portions respectively, are also stated :
- (7.) That in the case of double lines (including passing-places) the distance between the centre lines of each line of tramway is marked on the plans :
- (8.) That the gradients of the road on which each tramway is to be laid are shown on the section :
- (9.) That every crossing of a railway, tramway, river, or canal is shown, specifying in the case of railways and tramways whether they are crossed over, under, or on the level :
- (10.) That all tidal waters are coloured blue :
- (11.) That all places where, for a distance of 30 feet and upwards, there will be a less space than 9 feet 6 inches between the outside of the footpath on either side of the road and the nearest rail of the tramway are indicated by a thick dotted line on the plans on the side or sides of the line of tramway where such narrow places respectively occur, as well as noted on the plan, and that the width of the road at these places is also marked on the plans.

Deposits on or before 23rd December.

*By affidavit or
statutory decla-
ration, or
personally.*

XX. ————— will prove that on or before 23rd Decem- Schedule B.
ber 190 the promoters deposited at the office of the Board (Part III.)
of Trade,— and Rule 15.

- (a.) A memorial of the promoters, signed by them, or one of them, headed with a short title, descriptive of the undertaking or application (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
- (b.) A printed draft of the Provisional Order as proposed by the promoters, with any schedule referred to therein.
- (c.) An estimate of the expense of the proposed works (if any), signed by the persons making the same.
- (d.) A complete list of every railway, tramway, and canal proposed to be crossed or otherwise affected or interfered with, together with the names and addresses of the owners or reputed owners, and lessees or reputed lessees thereof, and
- (e.) A certified copy of the notice served upon them.
- (f.) A complete list of the local and road authorities through whose districts the proposed tramway is to pass, including the clerk to the county council in cases where it is proposed to cross county bridges.
- (g.) A separate list of the local and road authorities affected by any application relating to the use of steam or other mechanical power on authorised tramways, or to an extension of time or abandonment, and
- (h.) A certified copy of the notice served on such authorities.
- (i.) A certified copy of the notice posted in the streets.
- (j.) A complete list, prepared in accordance with the rules of the Board of Trade, of the owners, reputed owners, lessees, reputed lessees, and occupiers of all houses, shops, or warehouses abutting on any part of the highway where for a distance of 30 feet or upwards a less space than 9 feet 6 inches, or if it is intended to run carriages or trucks adapted for use on railways a less space than 10 feet 6 inches, is proposed to intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway; and
- (k.) A certified copy of the notice served upon them.

(l.) A description of the land (if any) which the promoters propose to purchase for the construction of the tramway.

(m.) A list of every Provisional Order or Act of Parliament (if any) of the promoters and a copy of any memorandum and articles of association, registered special resolution, or deed of settlement or incorporation.

(n.) A fee of thirty-five pounds.

Schedule B.
(Part III.)

XXI. ————— will prove that a sufficient number of printed copies of the Draft Provisional Order were deposited at the office named in that behalf in the advertisement, to be there furnished to all persons applying for them, at the price of not more than one shilling each. *By affidavit or statutory declaration, or personally.*

Rule 16.

XXII. ————— will prove in regard to the Draft Provisional Order :

- (1.) That it was deposited in triplicate, &c. : and ————— will prove
- (2.) That it describes where each tramway is to commence and terminate, and states the streets and roads along which it is to pass, and the total length of the double and single portions respectively of such tramway in miles, furlongs, chains, and decimals of a chain :
- (3.) That each double and single portion of such tramway, with its commencement and termination, is fully described :
- (4.) That every passing-place is described as a double line.

Acquirement of Lands.

Rule 15 (5).

XXIII. ————— will prove that the promoters have acquired or will be able to acquire at a given price any land which they may require to purchase for the construction of the tramway, and will produce the original contracts *Personally by production of the documents.*

Approval of Application made by Local Authority.

Sect. 4.
Schedule A.
(Part III.),
and Rule 1.

XXIV. ————— will prove :

1. That a resolution approving of the intention of the local authority to make the application was passed at a special meeting of the members constituting such local authority ; that two-thirds of such members were present and voted, and that a majority of those present and voting concurred in the resolution :

By affidavit or by statutory declaration with the documents referred to as exhibits, or personally by production of the documents.

2. That a month's previous notice of the meeting and of the purposes thereof had been given in the manner in which notices of meetings of such local authority are usually given; and that such notice contained a statement that the subject of the proposed tramway would be brought before the meeting:
3. And will produce a certified copy of such resolution and notice, and a certified statement of the number of members constituting the local authority, and of the number present and voting at such special meeting.

**Consent to Application made by Promoters not
being the Local Authority.**

*By affidavit or
by statutory
declaration
with documents
referred to as
exhibits, or
personally by
production
of the docu-
ments.*

XXV. ————— will prove :

Sect. 4 and
Rule 2.

1. That the proposed application was submitted to each local authority and road authority of the district or districts to which the application relates :
2. That a resolution of each such local authority or road authority approving of the application was duly passed at a meeting of the members of such local or road authority at which the application was considered :
3. That the notice convening the meeting at which such resolution was passed contained a statement that the subject of the application would be brought before the meeting, and will produce a certified copy of such resolution and notice.

BOARD OF TRADE,
(Railway Department),
Sept. 1899.

II.—PROOFS

Required by the Board of Trade of Compliance with the Provisions of the Tramways Act, 1870, and the Rules made by the Board of Trade under the powers of the Act *with respect to the Deposit and Advertisement of Provisional Orders as made, and (where necessary) the deposit of Amended Plans.*

NOTE—
1. *Proof must be given in the manner specified in the margin.*
2. *Statutory declarations must be stamped.*

I. Name of Provisional Order.

II. Name of Promoters.

Tramways Act, 1870, Sect. 13. Schedule B. (Part IV.), and Rule 19.

III. ————— will prove that a printed copy of the Provisional Order, as made by the Board of Trade, was deposited for public inspection in the office of the clerk of the peace of [sheriff clerk] of where the documents required to be deposited under Part II. of Schedule B. of the Act were deposited.

By affidavit, by statutory declaration, or personally by production of the receipts.

IV. ————— will prove that the Provisional Order, as made by the Board of Trade, was published as an advertisement once in the local newspaper in which the original advertisement of the intended application for the Order was published, or, in case the same shall not be published, in some other newspaper published in the district, and will produce a copy of the newspaper.

Personally by production of the newspaper.

V. ————— will prove :

1. That the Order, as advertised, is a correct copy of the Order as delivered by the Board of Trade, and that the advertisement had a short heading stating that the Order had been made by the Board of Trade under the Tramways Act, 1870, *previous to its being introduced into a Confirmation Bill :*
2. That the advertisement stated the name of the office where printed copies of the Order could be obtained, and that such office was the office named in the original advertisement of the application for the Order.

By affidavit, or by statutory declaration, or personally.

Sect. 13. Sched. B. (Part IV.), and Rule 19.

VI. ————— will prove that a sufficient number of such printed copies were deposited at the office named in the above-mentioned advertisement at a price of

By affidavit, by statutory declaration, or personally.

VII. ——— will prove that the deposit and Sect. 14. advertisement of the Order as made took place not later than the 25th April.

Amended Plans (if any).

VIII. ——— will prove that a copy of the plan and section originally deposited for the purposes of the Order (or so much of the same as was necessary) showing every alteration in such plan and section made with the approval of the Board of Trade before the Order was granted has been deposited for public inspection :

Rules 18 and 19.

a. (If in England.) In the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish, and the office of the local authority of every district affected by such alteration.

b. (If in Scotland.) In the office of the principal sheriff clerk for every county, district, or division affected by such alteration.

IX. ——— will prove that a copy of the aforesaid plan and section has been deposited at the office of the Board of Trade.

By affidavit, by statutory declaration, or personally.

BOARD OF TRADE,
(Railway Department),
February, 1897.

REGULATIONS AND BY-LAWS

*Made by the Board of Trade with respect to the use of
Steam [or any Mechanical] Power on Tramways.*

[This is a Model Form issued by the Board of Trade. The particular application of it to the overhead trolley and other systems of traction will be found *post*, pp. 363 *sqq.* For the power to make such regulations and by-laws, see Model Tramway Order, *post*, pp. 432, 433, and Light Railway Orders, *post*, pp. 569, 614.]

THE BOARD OF TRADE, under and by virtue of the powers conferred upon them in this behalf, do hereby order that the following Regulations for securing to the public reasonable protection against danger in the exercise of the powers conferred by Parliament with respect to the use of steam [or any mechanical] power on all or any of the tramways on which the use of such power has been authorized by the (hereinafter called "the tramways") be [added to] or [substituted for] all other regulations in this behalf contained in any Tramway Act or Tramway Order confirmed by Act of Parliament, or in any Order of the Board of Trade heretofore made thereunder :

And the Board of Trade do also hereby [make the following By-laws] or [rescind and annul all By-laws heretofore made by them with regard to all or any of the tramways aforesaid, and do hereby make the following By-laws], or [in addition to the By-laws already made by them] with regard to all or any of such tramways :—

Regulations.

I. The engine or engines to be used on the tramways shall comply with the following requirements, that is to say :—

- (a) Each coupled wheel shall be fitted with a brake block, which can be applied by a screw or treadle or by other means, and also by steam.
- (b) A governor (which cannot be tampered with by the driver) shall be attached to each engine, and shall be so arranged

that at any time when the engine exceeds a speed of [*ten*] miles an hour it shall cause the steam to be shut off and the brake applied.

- (c) Each engine shall be numbered, and the number shall be shown in a conspicuous part thereof.
- (d) Each engine shall be fitted with an indicator, by means of which the speed is shown; with a life protector or protectors; with a suitable fender to push aside obstructions; and with a special bell [or whistle or other apparatus] to be sounded as a warning when necessary.
- (e) Arrangements shall be made enabling the driver to command the fullest possible view of the road before him.
- (f) Each engine shall be free from noise produced by blast and from the clatter of machinery such as to constitute any reasonable ground of complaint either to the passengers or to the public; the machinery shall be concealed from view at all points above four inches from the level of the rails, and all fire used on such engines shall be concealed from view (*a*).

II. Every carriage used on the tramways shall be so constructed as to provide for the safety of passengers, and for their safe entrance to, exit from, and accommodation in, such carriages, and for their protection from the machinery of any engine used for drawing or propelling such carriages; and shall be fitted with a distinct emergency brake, to come into action in case of separation between the engine and the carriage, and capable of being used in the event of the failure of the ordinary brake.

III. The Board of Trade and their officers may, from time to time, and shall on the application of the local authority of any of the districts through which the said tramways pass, inspect such engines or carriages used on the tramways and the machinery therein, and may, whenever they think fit, prohibit the use on the tramways of any of them which in their opinion are not safe for use.

IV. The speed at which such engines and carriages shall be driven or propelled along the tramways shall not exceed the rate of [*eight*] miles an hour, and the speed at which such engines and carriages shall pass through facing-points, whether fixed or movable, shall not exceed the rate of *four* miles an hour (*aa*).

V. The engines and carriages shall be connected by double couplings, one of such couplings being a screw coupling; and not more than one car shall be attached to an engine.

VI. Every engine running on the tramways shall carry a lamp or

(a) See *Manchester, Sheffield and Lincolnshire Railway Co. v. Wood* (1859), 2 E. & E. 344; 29 L. J. M. C. 29. Tramway engines are not subject to the provisions of the Acts regulating the use of locomotives on highways. (*Bell v. Stockton, &c. Tramway Co.* (1887), 51 J. P. 804, and see notes (*b*) to sect. 34 and (*p*) to sect. 46 of Tramways Act, 1870.)

(aa) See note (*p*) to sect. 46 of Tramways Act, 1870.

lamps, placed in a conspicuous position in the front of the engine, and such lamp or lamps shall be kept lighted from sunset to sunrise, and during fog, and shall show a bright coloured light (*b*).

[*Here to follow any special regulations that may be necessary.*]

VII. The speed of the engines and carriages shall not exceed the rate of *four* miles an hour at the following places:—

Penalty.

Note.—Any company or person using steam [or any mechanical] power on the tramways contrary to any of the above regulations, is for every such offence subject to a penalty not exceeding ten pounds, and also in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first, during which such offence continues.

By-laws.

I. The special bell [or whistle or other apparatus] shall be sounded by the driver of the engine from time to time when it is necessary as a warning.

II. No smoke or steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to passengers or to the public (*c*).

III. Whenever it is necessary to avoid impending danger, the engine shall be brought to a standstill (*d*).

IV. The entrance to and exit from the carriages shall be by the hindermost or conductor's platform, and not at the right hand side of such platform.

[*Here to follow any special by-laws that may be necessary.*]

(*b*) In *St. Helen's District Tramways Co. v. Wood* (1891), 60 L. J. M. C. 141, it was held (i) that a regulation in practically the same terms as this was good, though, under a local Act, it appeared that it ought rather to have been made as a by-law than as a regulation: (ii) that the company was rightly held responsible and convicted for the personal neglect of their driver, though they had provided lamps, and the means of lighting them and keeping them alight. See also *ante*, p. 207.

(*c*) A person, who was found to have permitted the emission of mingled smoke and steam, was held to have been rightly convicted on an information charging him with permitting smoke and steam to be emitted contrary to this by-law. (*Davis v. Loach* (1886), 50 J. P. 212.)

But a conviction was quashed where the information and conviction stated that the defendant permitted smoke to escape, contrary to this by-law, without stating in terms that there was any reasonable ground of complaint to the passengers or the public, or either of them. (*Cotterill v. Lemprière* (1890), 24 Q. B. D. 634; 58 L. J. M. C. 133.)

A driver was resting his engine, which was not in good repair. He could not help the emission of steam which took place, and only one person, a passer-by, complained of it. It was held that he was rightly convicted, as the by-law is imperative and the evidence was sufficient, although he had no *mens rea* and one passenger only complained. (*Hartley v. Wilkinson* (1885), 49 J. P. 726.)

(*d*) As to the meaning of "impending danger," see *Downing v. Birmingham and Midland Trams* (1888), 5 T. L. R. 40, *ante*, p. 247.

V. The engines and carriages shall be brought to a standstill immediately before reaching the following points :—

VI. A printed copy of the foregoing regulations and by-laws, and of all additional regulations and by-laws hereafter made with respect to the tramways, shall be placed, and kept placed, in a conspicuous position inside of each carriage in use on the tramways.

Penalty.

Note.—Any person or corporation offending against or committing a breach of any of these by-laws is liable to a penalty not exceeding forty shillings.

The provisions of the Tramways Act, 1870, with respect to recovery of penalties, is applicable to the penalties for the breach of these regulations or by-laws (*e*).

Signed by order of the Board of Trade, this day of ,
190 .

——— Assistant Secretary.

(*e*) See sect. 56 of the Act for the recovery of penalties, and, generally, sect. 47 and the note thereto.

MODEL REGULATIONS

ISSUED BY THE BOARD OF TRADE FOR THE USE OF
ELECTRIC POWER.

[These regulations will apply either to a tramway or to a light railway, where appropriate. See also the additional regulations in the Model Orders, *post*, pp. 570, 615.]

REGULATIONS, dated _____, made by the Board of Trade under the provisions of Special Tramways Acts or Light Railway Orders authorising lines on public roads; for regulating the use of electrical power; for preventing fusion or injurious electrolytic action of or on gas or water pipes or other metallic pipes, structures, or substances; and for minimising as far as is reasonably practicable injurious interference with the electric wires, lines, and apparatus of parties other than the company, and the currents therein, whether such lines do or do not use the earth as a return.

(*Note*.—The Board of Trade will be prepared to consider the issue of regulations for the use of alternating currents for electrical traction on application.)

FIRST MADE, MARCH, 1894.

REVISED, APRIL, 1903.

Definitions.

In the following regulations—

The expression “energy” means electrical energy.

The expression “generator” means the dynamo or dynamos or other electrical apparatus used for the generation of energy.

The expression “motor” means any electric motor carried on a car and used for the conversion of energy.

The expression “pipe” means any gas or water pipe or other metallic pipe, structure, or substance.

The expression "wire" means any wire or apparatus used for telegraphic, telephonic, electrical signalling, or other similar purposes.

The expression "current" means an electric current exceeding one-thousandth part of one ampere.

The expression "the company" has the same meaning or meanings as in the Tramways Act [Light Railways Order].

Regulations.

1. Any dynamo used as a generator shall be of such pattern and construction as to be capable of producing a continuous current without appreciable pulsation.

2. One of the two conductors used for transmitting energy from the generator to the motors shall be in every case insulated from earth, and is hereinafter referred to as the "line"; the other may be insulated throughout, or may be uninsulated in such parts and to such extent as is provided in the following regulations, and is hereinafter referred to as the "return."

3. Where any rails on which cars run or any conductors laid between or within three feet of such rails form any part of a return, such part may be uninsulated. All other returns or parts of a return shall be insulated, unless of such sectional area as will reduce the difference of potential between the ends of the uninsulated portion of the return below the limit laid down in Regulation 7.

4. When any uninsulated conductor laid between or within three feet of the rails forms any part of a return, it shall be electrically connected to the rails at distances apart not exceeding 100 feet by means of copper strips having a sectional area of at least one-sixteenth of a square inch, or by other means of equal conductivity.

5.—(a.) When any part of a return is uninsulated, it shall be connected with the negative terminal of the generator, and in such case the negative terminal of the generator shall also be directly connected, through the current-indicator hereinafter mentioned, to two separate earth connections which shall be placed not less than 20 yards apart.

(b.) The earth connections referred to in this regulation shall be constructed, laid, and maintained so as to secure electrical contact with the general mass of earth, and so that an electromotive force not exceeding four volts shall suffice to produce a current of at least two amperes from one earth connection to the other through the earth; and a test shall be made at least once in every month to ascertain whether this requirement is complied with.

(c.) Provided that in place of such two earth connections the company may make one connection to a main for water supply of not less than three inches internal diameter, with the consent of the owner thereof and of the person supplying the water, and provided that where, from the nature of the soil or

for other reasons, the company can show to the satisfaction of an inspecting officer of the Board of Trade that the earth connections herein specified cannot be constructed and maintained without undue expense, the provisions of this regulation shall not apply.

(*d.*) No portion of either earth connection shall be placed within six feet of any pipe except a main for water supply of not less than three inches internal diameter which is metallically connected to the earth connections with the consents hereinbefore specified.

(*e.*) When the generator is at a considerable distance from the tramways the uninsulated return shall be connected to the negative terminal of the generator by means of an insulated return conductor, and the generator shall have no other connection with earth; and in such case the end of each insulated return connected with the uninsulated return shall be connected also through a current-indicator to two separate earth connections, or with the necessary consents to a main for water supply, or with the like consents to both in the manner prescribed in this regulation.

(*f.*) If the current-indicator cannot conveniently be placed at the connection of the uninsulated return with the insulated return, this instrument may consist of an indicator at the generating station, connected by insulated wires to the terminals of a resistance interposed between the return and the earth connection or connections. The said resistance shall be such that the maximum current laid down in Regulation 6 (*i*) shall produce a difference of potential not exceeding one volt between the terminals. The indicator shall be so constructed as to indicate correctly the current passing through the resistance when connected to the terminals by the insulated wire before mentioned.

6. When the return is partly or entirely uninsulated the company shall in the construction and maintenance of the tramway (*a*) so separate the uninsulated return from the general mass of earth, and from any pipe in the vicinity; (*b*) so connect together the several lengths of the rails; (*c*) adopt such means for reducing the difference produced by the current between the potential of the uninsulated return at any one point and the potential of the uninsulated return at any other point; and (*d*) so maintain the efficiency of the earth connections specified in the preceding regulations as to fulfil the following conditions, viz. :—

- (*i*) That the current passing from the earth connections through the indicator to the generator or through the resistance to the insulated return, shall not at any time exceed either two amperes per mile of single tramway line or five per cent. of the total current output of the station.
- (*ii*) That if at any time and at any place a test be made by connecting a galvanometer or other current-indicator to the uninsulated return and to any pipe in the vicinity, it

shall always be possible to reverse the direction of any current indicated by interposing a battery of three Leclanché cells connected in series if the direction of the current is from the return to the pipe, or by interposing one Leclanché cell if the direction of the current is from the pipe to the return.

In order to provide a continuous indication that the condition (i) is complied with, the company shall place in a conspicuous position a suitable, properly connected, and correctly marked current-indicator, and shall keep it connected during the whole time that the line is charged.

The owner of any such pipe may require the company to permit him at reasonable times and intervals to ascertain by test that the conditions specified in (ii) are complied with as regards his pipe.

7. When the return is partly or entirely uninsulated a continuous record shall be kept by the company of the difference of potential during the working of the tramway between points on the uninsulated return. If at any time such difference of potential between any two points exceeds the limit of seven volts, the company shall take immediate steps to reduce it below that limit.

8. Every electrical connection with any pipe shall be so arranged as to admit of easy examination, and shall be tested by the company at least once in every three months.

9. Every line and every insulated return or part of a return except any feeder shall be constructed in sections not exceeding one-half of a mile in length, and means shall be provided for isolating each such section for purposes of testing.

10. The insulation of the line and of the return when insulated, and of all feeders and other conductors, shall be so maintained that the leakage current shall not exceed one-hundredth of an ampere per mile of tramway. The leakage current shall be ascertained daily before or after the hours of running when the line is fully charged. If at any time it should be found that the leakage current exceeds one-half of an ampere per mile of tramway, the leak shall be localised and removed as soon as practicable, and the running of the cars shall be stopped unless the leak is localised and removed within twenty-four hours. Provided that where both line and return are placed within a conduit this regulation shall not apply.

11. The insulation resistance of all continuously insulated cables used for lines, for insulated returns, for feeders, or for other purposes, and laid below the surface of the ground, shall not be permitted to fall below the equivalent of 10 megohms for a length of one mile. A test of the insulation resistance of all such cables shall be made at least once in each month.

12. Where in any case in any part of the tramway the line is

erected overhead and the return is laid on or under the ground, and where any wires have been erected or laid before the construction of the tramway in the same or nearly the same direction as such part of the tramway, the company shall, if required so to do by the owners of such wires or any of them, permit such owners to insert and maintain in the company's line one or more induction coils or other apparatus approved by the company for the purpose of preventing disturbance by electric induction. In any case in which the company withhold their approval of any such apparatus the owners may appeal to the Board of Trade, who may, if they think fit, dispense with such approval.

13. Any insulated return shall be placed parallel to and at a distance not exceeding three feet from the line when the line and return are both erected overhead, or eighteen inches when they are both laid underground.

14. In the disposition, connections, and working of feeders the company shall take all reasonable precautions to avoid injurious interference with any existing wires.

15. The company shall so construct and maintain their system as to secure good contact between the motors and the line and return respectively.

16. The company shall adopt the best means available to prevent the occurrence of undue sparking at the rubbing or rolling contacts in any place and in the construction and use of their generator and motors.

17. In working the cars the current shall be varied as required by means of a rheostat containing at least 20 sections, or by some other equally efficient method of gradually varying resistance.

18. Where the line or return or both are laid in a conduit the following conditions shall be complied with in the construction and maintenance of such conduit :—

- (a.) The conduit shall be so constructed as to admit of examination of and access to the conductors contained therein and their insulators and supports.
- (b.) It shall be so constructed as to be readily cleared of accumulation of dust or other *débris*, and no such accumulation shall be permitted to remain.
- (c.) It shall be laid to such falls and so connected to sumps or other means of drainage, as to automatically clear itself of water without danger of the water reaching the level of the conductors.
- (d.) If the conduit is formed of metal, all separate lengths shall be so jointed as to secure efficient metallic continuity for the passage of electric currents. Where the rails are used to form any part of the return, they shall be electrically connected to the conduit by means of copper strips having a sectional area of at least one-sixteenth of a square inch,

or other means of equal conductivity, at distances apart not exceeding 100 feet. Where the return is wholly insulated and contained within the conduit, the latter shall be connected to earth at the generating station or sub-station through a high resistance galvanometer suitable for the indication of any contact or partial contact of either the line or the return with the conduit.

- (e.) If the conduit is formed of any non-metallic material not being of high insulating quality and impervious to moisture throughout, the conductors shall be carried on insulators the supports for which shall be in metallic contact with one another throughout.
- (f.) The negative conductor shall be connected with earth at the station by a voltmeter and may also be connected with earth at the generating station or sub-station by an adjustable resistance and current-indicator. Neither conductor shall otherwise be permanently connected with earth.
- (g.) The conductors shall be constructed in sections not exceeding one-half a mile in length, and in the event of a leak occurring on either conductor that conductor shall at once be connected with the negative pole of the dynamo, and shall remain so connected until the leak can be removed.
- (h.) The leakage current shall be ascertained daily, before or after the hours of running, when the line is fully charged; and if at any time it shall be found to exceed one ampere per mile of tramway, the leak shall be localised and removed as soon as practicable, and the running of the cars shall be stopped unless the leak is localised and removed within 24 hours.

19. The company shall, so far as may be applicable to their system of working, keep records as specified below. These records shall, if and when required, be forwarded for the information of the Board of Trade.

Daily Records.

No. of cars running.

No. of miles of single tramway line.

Maximum working current.

Maximum working pressure.

Maximum current from the earth plate or water-pipe connections (*vide* Regulation 6 (i)).

Leakage current (*vide* Regulations 10 and 18 (f)).

Fall of potential in return (*vide* Regulation 7).

Monthly Records.

Condition of earth connections (*vide* Regulation 5).

Minimum insulation resistance of insulated cables in megohms per mile (*vide* Regulation 11).

Quarterly Records.

Conductance of joints to pipes (*vide* Regulation 8).

Occasional Records.

Specimens of tests made under provisions of Regulation 6 (ii).

April, 1903.

BOARD OF TRADE,
7, Whitehall Gardens, S.W.

FORM OF REGULATIONS

MADE BY THE BOARD OF TRADE FOR THE OVERHEAD TROLLEY SYSTEM.

[The inappropriate provisions must be omitted in any particular case.]



REGULATIONS dated _____, made by the Board
of Trade as regards Electrical Power (Overhead
Trolley System) on the _____ Tramways [*or*
Light Railways].

The Board of Trade, under and by virtue of the powers conferred upon them in this behalf, do hereby make the following regulations for securing to the public reasonable protection against danger in the exercise of the powers conferred by Parliament with respect to the use of electrical power (overhead trolley system) on all or any of the tramways on which the use of mechanical power has been authorised by [Acts or Orders authorising the tramways or light railways] (hereinafter called “the tramways” [*in the case of a light railway substitute “railway,” in the case of a mixed system substitute “lines”*]), [and they also order that the said regulations be substituted for all other regulations in this behalf contained in any Tramway Act or Tramway Order confirmed by Act of Parliament]:

And the Board of Trade do also hereby make the following by-laws with regard to the use of electrical power on all or any of such tramways.

[The Order of the Board of Trade in this behalf, dated _____, is hereby rescinded.]

Regulations.

I. Every motor carriage used on the tramways shall comply with the following requirements, that is to say:—

- (a) It shall be fitted, if and when required by the Board of Trade [*or within six months from the date of these regulations, or such further period as the Board of Trade may prescribe*], with an apparatus to indicate to the driver the speed at which it is running.
- (b) The wheels shall be fitted with brake blocks, which can be

applied by a screw or treadle, or by other means, and there shall be in addition an adequate electric brake.

The carriages used on the routes shall also be fitted with slipper brakes, *or* special electric brakes to prevent the cars running backwards.

- [(c) It shall be fitted, if and when required by the Board of Trade, with a governor which cannot be tampered with by the driver, and which shall operate so as to cut off all electric current from the motors whenever the speed exceeds miles an hour.]

The most recent Orders omit this requirement.

- (d) It shall be numbered inside and outside, and the number shall be shown in conspicuous parts thereof.
- (e) It shall be fitted with a suitable fender which will act efficiently as a life-protector, and with a special bell or whistle to be sounded as a warning when necessary.
- (f) It shall be so constructed as to enable the driver to command the fullest possible view of the road before him.
- (g) It shall be free from the clatter of machinery, such as to constitute any reasonable ground of complaint either to the passengers or to the public.

II. Every trailing carriage used on the tramways shall comply with the following requirements, that is to say :—

- (a) The wheels shall be fitted with brake blocks, which can be applied by a screw or treadle, or by other means.
- (b) It shall be numbered inside and outside, and the number shall be shown in conspicuous parts thereof.

[*Or, No trailing carriage shall be used on the tramways, except in the case of the removal of a disabled carriage.*]

III. Not more than two carriages shall be coupled together. When two are so running there shall be in all cases where the brakes on the second carriage are not controlled from the first carriage a man on the front platform of the second carriage in addition to the conductor, whose sole duty it shall be to attend to the brake, means being provided by which the driver can signal to this man when he wishes the brake on the rear carriage to be applied.

The carriages shall be connected by double couplings, one of which shall be a rigid or close coupling. The couplings shall be removed from the carriages when the carriages are used singly.

[*Omit where not required.*]

IV. Every carriage used on the tramways shall be so constructed as to provide for the safety of passengers, and for their safe entrance to, exit from, and accommodation in such carriage, and for their protection from the apparatus used for drawing or propelling the carriage.

Single-decked carriages only shall be used on the route of

the tramways [or No carriage running on the route shall carry passengers on the roof].

V. Every carriage on the tramways [or where two carriages are coupled together the foremost carriage] shall, during the period between one hour after sunset and one hour before sunrise, or during fog, carry a lamp so constructed and placed as to exhibit a white light visible within a reasonable distance to the front, and every such carriage [or where two carriages are coupled together the hindermost carriage] shall carry a lamp so constructed and placed as to exhibit a red light visible within a reasonable distance to the rear.

VI. The Board of Trade and their officers may from time to time, and shall, on the application of the local authority of any of the districts through which the said tramways pass, inspect the carriages used on the tramways, and the working arrangements generally, and may, whenever they think fit, prohibit the use on the tramways of any of them which, in their opinion, are not safe for use.

VII. (a). The speed at which the carriages shall be driven or propelled along the tramways shall not exceed the rate of miles an hour or such lower rate as is specified below [except in , where the speed shall not exceed the rate of miles an hour, and the speed at which the carriages shall pass through facing points, whether fixed or movable, shall not exceed the rate of *four* miles an hour].

The speed shall not exceed the rate of—

Six miles an hour in .

Or miles an hour in .

VIII. The slipper brake shall be applied in running down all gradients of , or steeper [or at on the descending journey].

IX. No carriage shall be permitted to stand on either of the running lines at , unless the exigencies of the street traffic necessitate it.

X. The carriages shall not be allowed to pass each other on the portion of the tramways between .

[XI. The passengers shall not have access to any portion of the electric circuit.

XII. All electric mains, leads, and connections used must be of ample size, and must be thoroughly insulated and protected by safety fuses or other cut-outs which will operate to break the circuit before the current has risen to an amount which would cause any injurious heating of the conductors, and the length of any safety fuse in the clear shall not be less than two inches.]

Recent regulations omit the two preceding clauses.

(a) See note (p) to sect. 46 of Tramways Act, 1870.

XIII. The electrical pressure or difference of potential between the overhead conductors used in connection with the working of the tramways and the earth, or between any two such conductors, shall in no case exceed 550 volts. The electrical energy supplied through feeders shall not be generated at or transformed to a pressure higher than 650 volts, except with the written consent of the Board of Trade, and subject to such regulations and conditions as they may prescribe.

[XIV. The sectional area of the conductor in any electric line laid or erected in any street after the date of these regulations shall not be less than the area of a circle of one-tenth of an inch diameter, and where the conductor is formed of a strand of wires, each separate wire shall be at least as large as No. 20 standard wire gauge: Provided that this regulation shall not apply to any electric line connected to the rails for the purpose of measuring the fall of potential in the return and not otherwise connected with the electric circuit.]

Recent regulations omit this clause.

XV. The overhead conductors used in connection with the working of the tramways shall be securely attached to supports, the intervals between which shall not, except with the approval of the Board of Trade, exceed 120 feet, and they shall be in no part at a less height from the surface of the street than 17 feet, except where they pass under railway bridges.

[At those points where the wires are within reach of the passengers [or At Bridge] conspicuous notices shall be fixed on the bridges or adjoining posts warning the public not to touch the wires.]

XVI. The overhead conductors shall be divided up into sections not exceeding (except with the special approval of the Board of Trade) one-half of a mile in length, between every two of which shall be inserted an emergency switch so enclosed as to be inaccessible to pedestrians.

XVII. No part of any electric line shall be used for the transmission of more than 300,000 Watts, except with the consent in writing of the Board of Trade, and efficient means shall be provided to prevent this limit being at any time exceeded.

XVIII. All electrical conductors fixed upon the carriages in connection with the "trolley wheel" shall be formed of flexible cables protected by india-rubber insulation of the highest quality, and additionally protected wherever they are adjacent to any metal so as to avoid risk of the metal becoming charged.

XIX. The trolley standard of every double-decked carriage shall be electrically connected to the wheels of the carriage in such manner as either to prevent the possibility of this standard becoming electrically charged from any defect in the electrical

conductors contained within it, or give a continuous warning signal to the driver or conductor. No passenger shall be allowed to travel on the roof of a carriage as long as there is risk of electric shock.

XX. An emergency cut-off switch shall be provided and fixed so as to be conveniently reached by the driver in case of any failure of action of the controller switch.

XXI. Efficient guard wires shall be erected and maintained at all places where telegraph or telephone wires cross above the overhead conductors of the tramways.

A new regulation proposed in lieu of this, with a memorandum explanatory thereof, will be found *post*, p. 371.

XXII. Where any accident by explosion or fire, or any other accident of such kind as to have caused or to be likely to have caused loss of life or personal injury, has occurred in connection with the electric working of the tramways, immediate notice thereof shall be given to the Board of Trade.

The form of return of electrical accidents will be found *post*, p. 381.

Penalty.

NOTE.—The Promoters or any company or person using electrical power on the tramways contrary to any of the above regulations are, for every such offence, subject to a penalty not exceeding 10*l.*; and also in the case of a continuing offence, to a further penalty not exceeding 5*l.* for every day during which such offence continues after conviction thereof.

By-laws.

I. The special bell or whistle shall be sounded by the driver of the carriage from time to time when it is necessary as a warning.

II. The entrance to and exit from the carriages (except in the case of those of the cross bench or Californian type) shall be by the hindermost or conductor's platform, except at a terminus when the carriages are stationary.

III. The carriages shall be brought to a standstill whenever it is necessary to avoid impending danger, and immediately before reaching the following points:—

[*See ante*, p. 247.]

IV. A printed copy of these regulations and by-laws shall be kept in a conspicuous position inside of each carriage in use on the tramways.

Penalty.

NOTE.—Any person offending against or committing a breach of any of these by-laws is liable to a penalty not exceeding forty shillings.

REGULATIONS FOR THE OVERHEAD TROLLEY SYSTEM.

The provisions of the Summary Jurisdiction Acts, with respect to the recovery of penalties, are applicable to the penalties for the breach of these regulations or by-laws.

[*Or*, The provisions of the Tramways Act, 1870, with respect to the recovery of penalties, are applicable to the penalties for the breach of these regulations or by-laws.]

This provision may be omitted where it is already covered by the Order or Act: see Model Tramways Order, *post*, p. 444.

Signed by order of the Board of Trade, this day of

Assistant Secretary, Board of Trade.

REGULATIONS FOR THE SURFACE CONTACT SYSTEM.

REGULATIONS dated , made by the Board of Trade as regards Electrical Power (Lorain Surface Contact System) on the Tramways.

These regulations and by-laws, as hitherto issued by the Board of Trade, are the same as those issued for the Overhead Trolley System above, with the omission of clauses XI. to XXI. of the regulations.

REGULATIONS FOR THE CONDUIT SYSTEM.

These are contained in clause 18 of the Regulations for the use of Electric Power, *ante*, p. 360.

REGULATIONS

MADE BY THE BOARD OF TRADE FOR CABLE TRACTION.

REGULATIONS, dated _____, made by the Board of Trade as regards the use of Cable Traction on the _____ Tramways.

The Board of Trade, under and by virtue of the power conferred upon them in this behalf, do hereby order that the following regulations for securing to the public reasonable protection against danger in the exercise of the powers conferred by Parliament with respect to the use of cable power on all or any of the tramways on which the use of such power has been authorised by [*titles of authorising Acts or Orders*] (hereinafter called "the tramways"), be substituted for all other regulations in this behalf contained in any Tramway Act or Tramway Order confirmed by Act of Parliament:

And the Board of Trade do also hereby make the following by-laws with regard to all or any of such tramways worked by cable traction:—

Regulations.

I. Every carriage used on the tramways shall comply with the following requirements, that is to say:—

- (a) It shall be fitted with an apparatus to indicate to the driver the speed at which it is running.
- (b) The wheels shall be fitted with brake blocks, which can be applied by a screw or treadle, or by other means.
- (c) A governor (which must on no account be tampered with by the person in charge of the engines) shall be attached to each stationary engine, and shall be so arranged that at any time when the engine exceeds the number of revolutions sufficient to move the cable at the maximum speeds prescribed by Regulation V., it shall cause the steam to be shut off.
- (d) It shall be numbered inside and outside, and the number shall be shown in conspicuous parts thereof.
- (e) It shall be fitted with a suitable fender which will act efficiently as a life protector, and with a special bell, whistle, or other apparatus to be sounded as a warning when necessary.
- (f) It shall be so constructed as to enable the driver to command the fullest possible view of the road before him.

II. The cable and pulleys shall be so constructed, maintained,

and worked as to be free from noise such as to constitute any reasonable ground of complaint either to the passengers or to the public.

III. The Board of Trade and their officers may from time to time, and shall, on the application of the local or road authority of any of the districts through which the tramways pass, inspect the stationary engines, cables, or carriages used on the tramways, and the machinery therein, and may, whenever they think fit, prohibit the use on, or in connection with, the tramways of any of them which, in their opinion, are not safe for use.

[Clauses IV. and V. are similar to clauses V. and VII. of the Regulations for the Overhead Trolley System, but the speed is not limited through fixed facing points.]

VI. The carriages shall not be allowed to descend the tramways by gravity alone, but shall always be attached by the gripper to the cable except when stopping or when close to the terminus.

VII. No carriage shall leave the depôts unless the gripper and the brake connections are in proper order.

VIII. The conductor shall not leave the carriage during its journey.

IX. No loaded waggon or other vehicle not adapted to run on the tramways shall be hauled in connection with any passenger carriage.

X. Catch-points or a special scotch-block shall be put in and maintained on the inside of the depôts to intercept runaway carriages.

Penalty.

[As in the Regulations for the Overhead Trolley System.]

By-laws.

[By-laws I. and II. are similar to By-laws I. and III. for the Overhead Trolley System.]

III. Every carriage used on the tramways shall be so constructed as to provide for the safety of passengers, and for their safe entrance to, exit from, and accommodation in such carriages; and in particular, means shall be adopted to prevent passengers entering or leaving the carriages on the off-side.

IV. A printed copy of these regulations and by-laws shall be kept in a conspicuous position inside of each carriage in use on the tramways.

Penalty.

[As in the Regulations for the Overhead Trolley System.]

Signed by order of the Board of Trade, this day of .

Assistant Secretary, Board of Trade.

MEMORANDUM OF THE BOARD OF TRADE

AS TO GUARD WIRES ON ELECTRIC TRAMWAYS.

Existing Regulation.

Efficient guard wires shall be erected and maintained at all places where telegraph or telephone wires cross above the electric conductors of the tramways.

Proposed New Regulation.

If and whenever telegraph or telephone wires, unprotected with a permanent insulating covering, cross above, or are liable to fall upon, or to be blown on to, the electric conductors of the tramways, efficient guard wires shall be erected and maintained at all such places.

Explanatory Memorandum.

NOTE.—The expression “telegraph wire” includes all telegraph and telephone wires.

For the purpose of this memorandum, telegraph wires are divided into two classes, namely:—

- (a) Wires weighing less than 100 lbs. per mile.
- (b) Wires weighing 100 lbs. or more per mile.

Each guard wire should be well earthed at one point at least, and at intervals of not more than five spans. The resistance to earth should be sufficiently low to insure that a telegraph or telephone wire falling on and making contact with the guard wire and the trolley wire at any time will cause the circuit breaker protecting that section to open.

The earth connection should be made by connecting the wire through the support to the rails by means of a copper bond. When first erected, the resistance to earth of the guard wires should be tested, and periodical tests should be made to prove that the earth connection is efficient.

Guard wires should be, in general, of galvanised steel, but in manufacturing districts in which such wires are liable to corrosion bronze or hard drawn copper wires should be used.

The gauge of the guard wire should not be less than seven strands of No. 16 or one of No. 8 wire.

The supports for the guard wires should be rigid and of sufficient strength for their purpose, and at each support each guard wire should be securely bound in or terminated.

MEMORANDUM AS TO GUARD WIRES.

The rise of the trolley boom should be so limited that if the trolley leaves the wire it will not foul the guard wires.

TELEGRAPH WIRES CROSSING TROLLEY WIRES.

Class (a).—Wires weighing less than 100 lbs. per Mile.

The guard wires may be of the cradle or hammock type, attached to the arms of telegraph poles. It is necessary that the spans should be short; and if required an additional pole or poles should be set.

(1.) Where there is one trolley wire, two guard wires should be erected (Fig. 1).

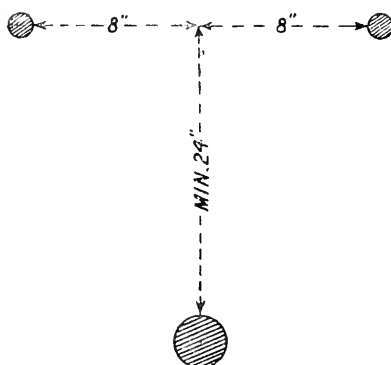


FIG. 1.

(2.) Where there are two trolley wires at a distance not exceeding 12 feet apart, two guard wires should be erected (Fig. 2).

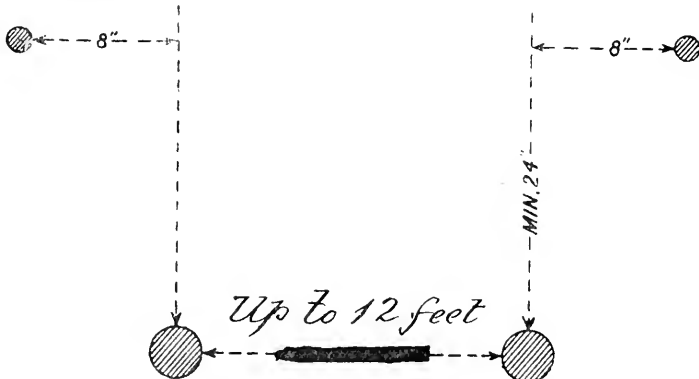


FIG. 2.

(3.) In special cases, at junctions or curves, where parallel guard wiring would be complicated, two guard wires may be so erected that a falling wire must fall on them before it can fall on the trolley wire.

Class (b).—Wires weighing 100 lbs. or more per Mile.

(4.) Where there is only one trolley wire, two guard wires should be erected (Fig. 3).

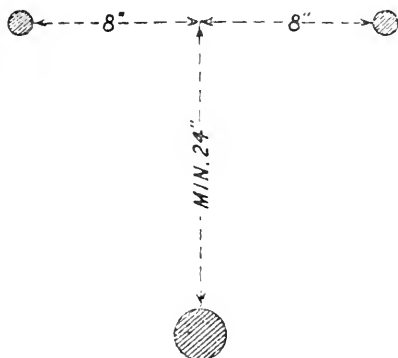


FIG. 3.

(5.) Where there are two trolley wires not more than 15 inches apart, two guard wires should be erected (Fig. 4).

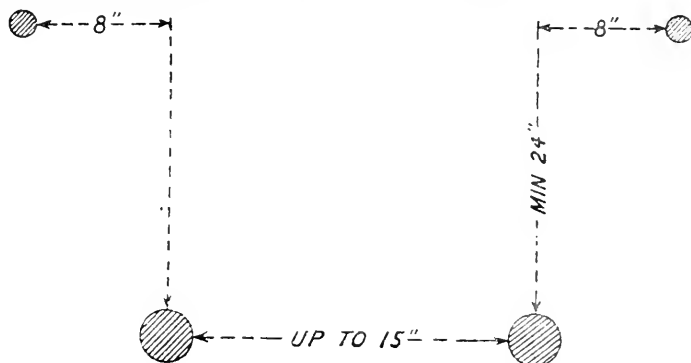


FIG. 4.

(6.) Where there are two trolley wires and the distance between them exceeds 15 inches, but does not exceed 48 inches, three guard wires should be erected (Fig. 5).

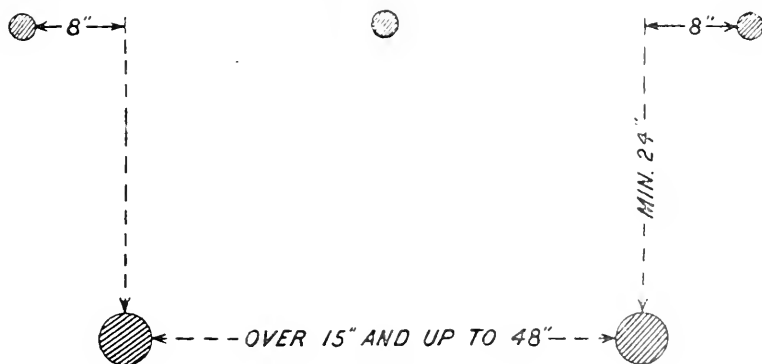


FIG. 5.

MEMORANDUM AS TO GUARD WIRES.

(7.) Where the distance between the two trolley wires exceeds 48 inches, each trolley wire should be separately guarded (Fig. 6).



FIG. 6.

(8.) It is desirable, where possible, to divert telegraph wires from above trolley junctions and trolley wire crossings, and undertakers should endeavour to make arrangements to that effect with the owners of telegraph wires.

TELEGRAPH WIRES PARALLEL TO TROLLEY WIRES.

Classes (a) and (b).

(9.) Where telegraph wires not crossing a trolley wire are liable to fall upon or to be blown on to a trolley wire, a guard wire should be so erected that a falling wire must fall on the guard wire before it can fall on the trolley wire.

(10.) When guard wires are attached to other supports than the trolley poles they should be connected with the rails at one point at least.

(11.) When it is possible that a telegraph wire may fall on an arm or a stay, or a span wire, and so slide down on to a trolley wire, guard hooks should be provided.

GENERAL.

Minimum guarding requirements for Classes (a) and (b) are provided for in this memorandum, but in exceptional cases, such as in very exposed positions, or for unusually heavy telegraph wires, special precautions should be taken.

BOARD OF TRADE,
7, Whitehall Gardens, London, S.W.
September, 1902.

MODEL FORM OF BY-LAWS AND REGULATIONS

MADE BY THE AS THE LOCAL AUTHORITY, UNDER SECT. 46 OF THE TRAMWAYS ACT, 1870.

[See notes (z) to sect. 46 and (d) to sect. 48 of Tramways Act, 1870, for the principles on which the by-laws of a local authority are valid or invalid, and for cases on such by-laws generally.]



1. For the purpose of these by-laws and regulations the term “car” shall mean any [engine or] carriage using any tramway laid down within the said [borough], and the terms “driver” and “conductor” shall respectively mean the driver and conductor or other person having charge of a [an engine or] car.

2. The driver of every car shall cause the same to be driven at a speed of not less than [four] miles an hour on the average, and not exceeding eight miles an hour.

3. The driver of every car shall so drive the same that it shall not follow a preceding car at a less distance than (a) yards.

4. Subject to the requirements of By-laws Nos. 3 and 5, the driver or conductor of a car shall stop the same for the purpose of setting down or taking up passengers, when required by any passenger desiring to leave the car, or by any person desirous of travelling by the car, for whom there is room, and to whose admission no valid objection can be made: Provided that nothing in this by-law shall require a car to be stopped on any gradient steeper than 1 in 25.

[The preceding by-law is inappropriate where, as is now frequently the case, fixed stopping places are arranged.]

5. Except at a passing place or terminus, no car shall be stopped at the intersection or junction of two or more streets or roads, nor within [ten] yards of a car on an adjoining line of rails.

6. The driver of a car, on coming in sight of a vehicle standing

(a) This distance should be not less than 10 nor more than 150 yards.

or travelling on any part of the road so as not to leave sufficient space for the car to pass, shall sound his bell or whistle as a warning to the person in charge of such vehicle, and that person shall, with reasonable despatch, cause such vehicle to be removed so as not to obstruct the car.

7. No person shall in any way wilfully impede or interfere with the traffic on the tramways, nor shall any driver or conductor needlessly cause interruption to the ordinary road traffic.

8. Every driver, conductor, or other person offending against any of these by-laws and regulations shall be liable to a penalty not exceeding forty shillings for each offence, and not exceeding for any continuing offence ten shillings for every day during which the offence continues (*b*).

[Here insert any by-laws to meet special cases.]

9. These by-laws shall come into force on the _____ day of _____, 190_____.

The Common Seal of the said Mayor, Aldermen and Burgesses,
affixed by order of the Council of the said Borough at a
meeting of such Council held on the day of in
the presence of

(L.S.) _____ by _____ Mayor.
[or other appropriate attestation clause.] _____ Town Clerk.

I hereby certify that a true copy of the foregoing by-laws and regulations has, in accordance with the provisions of sect. 46 of the Tramways Act, 1870, been laid before the Board of Trade not less than two calendar months before such by-laws and regulations came into operation, and that such by-laws and regulations have not been disallowed by the Board of Trade within the said two calendar months.

An Assistant Secretary to the Board of Trade.
day of 190 .

(b) See Tramways Act, 1870, s. 47, and note thereto.

MODEL FORM OF BY-LAWS AND REGULATIONS

MADE BY A TRAMWAY COMPANY UNDER THE POWERS CONFERRED ON THE COMPANY BY THE TRAMWAYS ACT, 1870.

[The cases relating to by-laws generally and tramway by-laws in particular are collected and discussed in note (z) to sect. 46 of Tramways Act, 1870. That section confers on promoters the power to make by-laws. See, too, note (d) to sect. 48.]

1. The by-laws and regulations hereinafter set forth shall extend and apply to all carriages of the company, and to all places with respect to which the company have power to make by-laws or regulations.

2. Every passenger shall enter or depart from a carriage by the hindermost or conductor's platform, and not otherwise (a).

3. No passenger shall smoke inside any carriage.

4. No passenger or other person shall, while travelling in or upon any carriage, play or perform upon any musical instrument.

5. A person in a state of intoxication shall not be allowed to enter or mount upon any carriage, and if found in or upon any carriage shall be immediately removed by or under the direction of the conductor (b).

6. No person shall swear or use obscene or offensive language whilst in or upon any carriage, or commit any nuisance in or upon or against any carriage, or wilfully interfere with the comfort of any passenger (c).

7. No person shall wilfully cut, tear, soil, or damage the cushions or the linings, or remove or deface any number plate, printed or other notice, in or on the carriage, or break or scratch any window of or otherwise wilfully damage any carriage. Any person acting in contravention of this regulation shall be liable to the penalty prescribed by these by-laws and regulations, in addition to the liability to pay the amount of any damage done.

8. A person whose dress or clothing might, in the opinion of the

(a) See *Freel v. Bury* (1900), "Times" Newspaper, July 21; (1901), Jan. 26 (C. A.), *ante*, p. 250.

(b) See *Murgatroyd v. Blackburn and Over Darwen Tramway Co.* (1887), 3 T. L. R. 451, *ante*, p. 248.

(c) Discussed in *Gentel v. Rapps*, [1902] 1 K. B. 160; 71 L. J. K. B. 105, *ante*, p. 201.

conductor of a carriage, soil or injure the linings or cushions of the carriage, or the dress or clothing of any passenger, or a person who, in the opinion of the conductor, might for any other reason be offensive to passengers, shall not be entitled to enter or remain in the interior of any carriage, and may be prevented from entering the interior of any carriage, and shall not enter the interior of any carriage after having been requested not to do so by the conductor, and, if found in the interior of any carriage, shall, on request of the conductor, leave the interior of the carriage upon the fare, if previously paid, being returned.

9. Each passenger shall, upon demand, pay to the conductor or other duly authorised officer of the company the fare legally demandable for the journey (*d*).

10. Each passenger shall show his ticket (if any) when required so to do to the conductor or any duly authorised servant of the company, and shall also when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger (*d*).

11. A passenger not being an artisan, mechanic, or daily labourer, within the true intent and meaning of the Acts of Parliament relating to the company, shall not use or attempt to use any ticket intended only for such artisans, mechanics, or daily labourers.

12. Personal or other luggage (including the tools of artisans, mechanics, and daily labourers) shall, unless otherwise permitted by the conductor, be placed on the front or driver's platform, and not in the interior or on the roof of any carriage (*e*).

13. No passenger or other person not being a servant of the company shall be permitted to travel on the steps or platforms of any carriage, or stand either on the roof or in the interior, or sit on the outside rail on the roof of any carriage, and shall cease to do so immediately on request by the conductor (*f*).

14. No person, except a passenger or intending passenger, shall enter or mount any carriage, and no person shall hold or hang on by or to any part of any carriage, or travel therein otherwise than on a seat provided for passengers.

15. When any carriage contains the full number of passengers which it is licensed to contain, no additional person shall enter, mount, or remain in or on any such carriage when warned by the conductor not to do so (*g*).

(*d*) This by-law and similar by-laws have been the subject of judicial decision in the cases discussed in note (*z*) to sect. 46 of Tramways Act, 1870, *ante*, p. 201.

(*e*) See *Greig v. Aberdeen District Tramways Co.* (1890), 17 R. 808, *ante*, p. 248.

(*f*) This by-law or a similar one was held to protect the company in an action by a passenger, who had committed a breach of it, for injuries in *Docherty v. Glasgow Tramway and Omnibus Co., Ltd.* (1894), 32 S. L. R. 353; and *Byrne v. Londonderry Tramway Co.* (1902), 2 I. R. 457 (C. A.). See note (*h*) to sect. 55 of Tramways Act, 1870, *ante*, p. 247.

(*g*) See note (*d*) to sect. 48 of Tramways Act, 1870.

16. When a carriage contains the full licensed number of passengers, a notice to that effect shall be placed in conspicuous letters and in a conspicuous position on the carriage.

17. The conductor shall not permit any passenger beyond the licensed number to enter or mount or remain in or upon any part of a carriage (*h*).

18. No person shall enter, mount, or leave, or attempt to enter, mount, or leave, any carriage whilst in motion (*i*).

19. No dog or other animal shall be allowed in or on any carriage, except by permission of the conductor, nor in any case in which the conveyance of such dog or other animal might be offensive or an annoyance to passengers. No person shall take a dog or other animal into any carriage after having been requested not to do so by the conductor. Any dog or other animal taken into or on any carriage in breach of this regulation shall be removed by the person in charge of such dog or other animal from the carriage immediately upon request by the conductor, and in default of compliance with such request may be removed by or under the direction of the conductor.

20. No person shall travel in or on any carriage of the company with loaded fire-arms.

21. No passenger shall wilfully obstruct or impede any officer or servant of the company in the execution of his duty upon or in connection with any carriage or tramway of the company.

22. The conductor of each carriage shall enforce or prevent the breach of these by-laws and regulations to the best of his ability.

23. Any person offending against or committing a breach of any of these by-laws or regulations shall be liable to a penalty not exceeding forty shillings (*k*).

24. The expression "conductor" shall include any officer or servant in the employment of the company and having charge of a carriage.

25. There shall be placed and kept placed in a conspicuous position inside of each carriage in use a printed copy of these by-laws and regulations.

26. These by-laws shall come into force on the day of
190 .

——— *Secretary of the Company.*

[*Certified in the same manner as the preceding set of by-laws.*]

(*h*) See cases in note (*d*) to sect. 48 of Tramways Act, 1870.

(*i*) See the cases on contributory negligence, *ante*, p. 248.

(*k*) See Tramways Act, 1870, s. 47, and note thereto. Penalties are recovered under sect. 56 of the Act.

FORM OF RETURN OF GENERAL ACCIDENTS

OCcurring ON TRAMWAYS AND LIGHT RAILWAYS ON PUBLIC ROADS.

RETURN OF ACCIDENTS (GENERAL) for the month of

190 .

(To be forwarded to the Assistant Secretary, Railway Department, Board of Trade, S.W.)

Entries in the column headed "Nature of Accident" should show under which of the following heads the several accidents fall, viz.:

1. Collisions between two cars.
2. Collisions between cars and other vehicles.
3. Cars running away.
4. Cars derailed.
5. Passengers or persons in road knocked down or injured.
6. Other classes of accident.

Accidents should, so far as possible, be grouped under these heads, in order of date.

Accidents causing death or serious personal injury should be reported forthwith ; other accidents monthly.

GENERAL ACCIDENTS.

NAME OF LINE

Date and Time.	Nature of Accident. (See Instructions above.)	Place and Road (state also whether single or double line or a passing-place).	Gradient.	Type of Car and name of Life-guard, and how it acted.	Nature of Brakes and how they acted.	Speed of Car at time of Accident.	Damage or personal injury (if any).	Cause of Accident and general Remarks.

(Signature)

(Date)

FORM OF RETURN OF ELECTRICAL ACCIDENTS

OCCURRING ON TRAMWAYS AND LIGHT RAILWAYS ON PUBLIC ROADS.

RETURN OF ACCIDENTS (ELECTRICAL) for the month of

190

(To be forwarded to the Assistant Secretary, Railway Department, Board of Trade, S.W.)

NOTE.—Accidents causing death or serious personal injury should be reported forthwith, other accidents monthly.

NAME OF LINE

ELECTRICAL ACCIDENTS.

Nature of Accident.	Date and Time.	Place.	Damage or personal injury (if any).	* Further particulars and remarks.
<p>(a) Guard wire pulled down by trolley.</p> <p>(b) Trolley wire pulled down by trolley.</p> <p>(c) Overhead work broken by trolley.</p> <p>(d) Trolley head pulled off.</p> <p>(e) Trolley standard damaged by trolley jumping.</p> <p>(f) Trolley boom pulled out or broken by trolley jumping.</p> <p>(g) Miscellaneous damage done by trolley jumping.</p> <p>1. Trolley jumping and causing damage:—</p> <p>2. Guard wire falling on trolley wire.</p> <p>3. Trolley wire dropping without breaking.</p> <p>4. Trolley wire breaking and falling.</p> <p>5. Short circuit on feeder.</p> <p>6. Failure of insulation.</p> <p>7. Other classes of accident.</p>				

* N.B.—Any return respecting the failure of a trolley wire should be accompanied by remarks as to the probable cause of the failure, *i.e.*, whether undue tension, blow from trolley, or overheating in soldering, together with a statement of the material; the appearance of the fracture should also be described.

(Signature)

(Date)

190

STANDING ORDERS OF PARLIAMENT

RELATIVE TO

PRIVATE BILLS

AND

BILLS FOR CONFIRMING PROVISIONAL ORDERS.



[The Standing Orders here collected are, in the main, those which relate more especially to Tramway Bills. The arrangement followed is that of the Commons Standing Orders, but the numbering of the Lords Standing Orders, where it differs from that of the Commons, is given, and all differences between the Orders of the two Houses are shown, words occurring in the Commons Orders only being printed in *italics*, and words occurring in the Lords Orders only in *italics* within brackets.]

Private bills distinguished as local or personal. Meaning of provisional order confirmation bill.

[H. L.] For the purposes of the Standing Orders of this House private bills are distinguished as either local bills or personal bills, and bills for confirming a provisional order or provisional certificate are referred to as provisional order confirmation bills.

I.—THE TWO CLASSES OF *PRIVATE* [*LOCAL*] BILLS.

Private bills divided into two classes.

1. [H. C.] For the purposes of the Standing Orders of this House, all private bills to which the Standing Orders are applicable shall be divided into the two following classes, according to the subjects to which they respectively relate :—

Local bills divided into two classes.

[H. L.] All bills (not being estate bills) which seek powers with reference to any of the following subjects are in these orders termed local bills, and are divided into two classes, according to the subjects to which they respectively relate :

* * * * *

Second class.

2ND CLASS.—Making, maintaining, varying, extending, or enlarging any tramway, tramroad

II.—STANDING ORDERS, COMPLIANCE WITH WHICH IS TO BE PROVED BEFORE THE EXAMINERS.

In these orders, unless the context otherwise requires—

The term “tramway” means a tramway laid along a street or road; the term “tramroad” means a tramway laid elsewhere than along a street or road: Provided that where a bill relates partly to tramroad and partly to tramway as here defined, the provisions of these orders shall apply to such tramroad or tramway, however the same may be described in the bill:

The term “railway” includes “tramroad”:

The term “lessee” includes a person holding an agreement for a lease:

The term “occupier” applies only to ratepayers, and to other persons not being ratepayers, whose interest in the premises occupied is not less than that of a quarterly tenant:

The term “London,” except where the city of London is expressly mentioned, means the administrative county of London:

The term “mechanical power” includes steam, electrical and every other motive power not being animal power.

Other expressions defined in the Interpretation Act, 1889, have the same meanings in these orders as if these orders were an Act of Parliament passed after the commencement of that Act.

Compliance with the following Standing Orders shall be proved before one of the examiners, viz.:—

1. *Notices by Advertisement.*

3. In all cases where application is intended to be made for leave to bring in a *bill relating to any of the subjects included in either of the two classes of private bills [local bill]*, notice shall be given stating the objects of such intended application, *and the time at which copies of the bill will be deposited in the Private Bill Office*; and if it be intended to apply for powers for the compulsory purchase of lands or houses, or compulsory user of the same, or for extending the time granted by any former Act for that purpose, or to amalgamate with any other company, or to sell or lease the undertaking, or to purchase or take on lease the undertaking of any other company, or to enter into working agreements or traffic arrangements, or to dissolve any company, or to amend or repeal any former Act or Acts, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or to confer, vary, or extinguish any other rights or privileges, or to impose on any lands or houses, or to render any lands or houses liable to the imposition of any charge in

Notices to state objects of application and powers intended to be applied for.

respect of any improvement, the notice shall specify such intention, and shall also specify the company, person, or persons with, to, from, or by whom it is intended to be proposed that such amalgamation, sale, purchase, lease, working agreements, or traffic arrangements shall be made; and the whole of the notice relating to the same bill shall, except as provided by *Standing Order 9*, be included in the same advertisement, which shall be headed by a short title, descriptive of the undertaking or bill, and shall be subscribed with the name and address of the person, company, corporation or firm responsible for the publication of the notice.

Notices to
contain names
of parishes,
&c.

4. In cases of *bills included in the second class* [*local bills of the second class*], . . . , such notices shall also contain a description of all the termini, together with the names of the parishes, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged, or in which any land or houses intended to be taken are situate, and where any common or commonable land is intended to be taken or used compulsorily, such notice shall contain the name of such common or commonable land (if any), and the name of any parish in which such land is situate, together with an estimate of the quantity of such common or commonable land proposed to be taken or used compulsorily, and shall state the time and place of deposit of the plans, sections, books of reference, and copies of the Gazette notice respectively, with the clerks of the peace and sheriff clerks, and also with the officers respectively mentioned in *Standing Order 29*, as the case may be.

Notices to
specify line of
tramway.

6. In cases of bills for laying down a tramway, the notice shall specify at what point or points and on which side of the street or road it is proposed to lay such tramway so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways a less space than ten feet six inches shall intervene between the outside of the footpath on the side of the street or road and the nearest rail of the tramway. In the case of a bill for constructing a tramroad or tramway the notice shall specify the gauge to be adopted, and the motive power to be employed.

See sect. 9 of Tramways Act, 1870, and notes thereto, and *ante*, p. 325.

Publication
of notices in
Gazettes and
newspapers.

9. In the months of October and November, or either of them, immediately preceding the application for a bill the notice shall be published once in the London, Edinburgh, or Dublin Gazette, as the case may be, and in the following newspapers, namely—

- (1.) In the case of a bill relating specially to any particular city, borough, town, or urban district, the notice shall be published once in each of two successive weeks, with an interval between such publications of not less than six clear days, in some newspaper or newspapers published in

such city, borough, town, or district, or if there be no newspaper published therein, then in some newspaper or newspapers published in the county in which such city, borough, town, or district, or any part thereof is situate ;

- (2.) In the case of a bill authorising the construction of works or the taking of lands, or extending the time granted by a former Act for the construction of works or taking of lands, situate in one county only, or relating to an undertaking or to lands situate in one county only, or promoted by a company or companies or other parties possessed of an undertaking situate in one county only, the notice shall be published once in each of two successive weeks, with an interval between such publications of not less than six clear days, in some newspaper or newspapers published in that county, or if there be no newspaper published therein, then in some newspaper or newspapers published in some county adjoining or near thereto ;
- (3.) In the case of a bill authorising the construction of works or the taking of lands, or extending the time granted by a former Act for the construction of works or the taking of lands, in more than one county, or relating to an undertaking or to lands situate in more than one county, or promoted by a company or companies or other parties possessed of an undertaking situate in more than one county, the notice shall be published once in each of two successive weeks, with an interval between such publications of not less than six clear days, in some newspaper or newspapers of the county in which the principal office of the company or companies or other parties who are the promoters of the bill is situate, [*or in case there be no such office, then in a newspaper published in each county in which any such works, lands, or undertaking are situate,*] and in some newspaper or newspapers published in each county in which any new works are proposed to be constructed, or in which any lands are intended to be taken, or in which any works or lands are situate, in respect of which any new or further powers for the completion or taking thereof are intended to be applied for, or if there be no newspaper published therein, then in some newspaper or newspapers published in some county adjoining or near thereto : provided always, that if the bill relates to lands or works, situate in more than one county, it shall be sufficient (at the option of the promoters) to publish in each of such counties so much only of the notice as relates specifically to the lands or works situate in that county, together with the short title of the notice and an intima-

tion that the notice has been published in full or sent for publication in full in the Gazette ;

- (4.) No publication under this order shall be made after the 27th day of November.

Notices to be posted in street in case of tramways.

10. In the months of October and November, or one of them, immediately preceding the application for any bill for laying down a tramway, or constructing an underground railway, when such bill contains powers authorising any alteration or disturbance of the surface of any street or road, notice thereof shall be posted for fourteen consecutive days in every such street or road, in such manner as the authority having the control of such street or road shall direct ; and if after such application to such authority no such direction shall be given, then in some conspicuous position in every such street or road, and such notice shall also state the place or places at which the plans of such tramway or railway will be deposited.

2. *Notices and Applications to Owners, Lessees, and Occupiers of Lands and Houses.*

Application to owners, &c. on or before 15th December.

11. On or before the 15th day of December immediately preceding the application for a bill for power to take any lands or houses compulsorily, or for compulsory user of the same, or for an extension of the time granted by any former Act for that purpose or to impose an improvement charge on any lands or houses, or to render any lands or houses liable to the imposition of an improvement charge, application in writing shall be made to the owners or reputed owners, lessees or reputed lessees, and occupiers of all such lands and houses, inquiring whether they assent, dissent, or are neuter in respect of such application, and in cases of *bills included in the second class* [*local bills of the second class*], such application shall be, as nearly as may be, in the form set forth in the Appendix marked (A).

List of owners, &c. assenting, dissenting, and neuter.

12. Separate lists shall be made of the names of such owners, lessees and occupiers, distinguishing those who have assented, dissented, or are neuter in respect to such application, or who have returned no answer thereto ; and where no written acknowledgment has been returned to an application forwarded by post, or where such application has been returned as undelivered at any time before the making up of such lists, the direction of the letter in which the same was so forwarded shall be inserted therein.

Notice to frontagers in case of tramways.

13. On or before the 15th day of December immediately preceding the application for a bill for the laying down a tramway, notice in writing shall be given to the owners or reputed owners, lessees or reputed lessees, and *occupiers* of all houses, shops, or warehouses abutting upon any part of any street or road, where, for a distance of thirty feet or upwards it is proposed that a less space than nine

feet six inches shall intervene between the outside of the footpath on either side of the road, and the nearest rail of the tramway, or a less space than ten feet six inches, if it is intended to run on the tramway carriages or trucks adapted for use upon railways.

[H. C. 13, II. L. 13A.] On or before the 15th day of December immediately preceding the application for any bill for laying down a tramway, crossing any railway or tramway on the level, or crossing any railway, tramway, or canal by means of a bridge, or otherwise affecting or interfering with such railway, tramway, or canal, notice in writing of such application shall be served upon the owner or reputed owner, and upon the lessee or reputed lessee of such railway, tramway, or canal, and such notice shall state the place or places at which the plans of the tramway to be authorised by such bill have been or will be deposited.

See sect. 9 of Tramways Act, 1870, and notes thereto, and *ante*, p. 326.

16. On or before the 15th day of December immediately preceding the application for a bill whereby the whole or any part of a work authorised by any former Act is intended to be relinquished, notice in writing of such bill shall be served upon the owners or reputed owners, lessees or reputed lessees, and *occupiers* of the lands in which any part of the said work intended to be thereby relinquished is situate.

Notice to owners, &c.

17. On or before the 21st day of December immediately preceding the application for a bill whereby any express statutory provision then in force for the protection of the owner, lessee, or occupier of any property, or for the protection or benefit of any public trustees or commissioners, corporation or person, specifically named in such provision, is sought to be altered or repealed, notice in writing of such bill, and of the intention to alter or repeal such provision, shall be served upon every such owner, lessee, or occupier, public trustees or commissioners, corporation or person.

Alteration or repeal of provisions, notice to owners, &c.

22. In cases of bills to authorise the laying down of a tramway the promoters shall, [*on or before the eighteenth day of January,*] obtain the consent of the local authority of the district or districts through which it is proposed to construct such tramway, and where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority. For the purposes of this order, in England and Scotland the local and road authorities shall be the local and road authorities for the purposes of "The Tramways Act, 1870," except that in the case of a rural district in England the rural district council shall be deemed to be the local authority, and in Ireland the local and road authorities shall be the district councils and the county councils respectively: Provided that where it is proposed to lay down a continuous line of tramway in

Consents in case of tramway bills.

two or more districts, and any local or road authority having jurisdiction in any such districts does not consent thereto, the consents of the local and road authority or the local and road authorities having jurisdiction over two-thirds in length of the streets and roads along which such line of tramway is proposed to be laid shall be deemed to be sufficient.

See Tramways Act, 1870, s. 4, and Sched. A., and notes thereto. The words in brackets, peculiar to the Lords Order, were first added in 1902.

Plans, books of reference, and sections with clerk of the peace, &c.

24. In cases of bills of the second class, a plan and also a duplicate thereof, together with a book of reference thereto, and a section and also a duplicate thereof, as hereinafter described; . . . shall be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, and where any county in Scotland is divided into districts or divisions, then also in the office of the principal sheriff clerk in or for each district or division in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, or in which such lands or houses are situate, on or before the 30th day of November immediately preceding the application for the bill;

Clerks of peace to indorse a memorial on plans, &c.

. . . and the clerks of the peace or sheriff clerks, or their respective deputies, shall make a memorial in writing upon the plans, sections, and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and shall at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections so deposited shall be sealed up and retained in the possession of the clerk of the peace or sheriff clerk until called for by order of one of the two Houses of Parliament. . . .

Deposit of plans, &c. in *Private Bill* [Parliament] Office.

25. On or before the 30th day of November a copy of the said plans, sections, and books of reference, . . . shall be deposited in the *Private Bill Office of this House* [office of the Clerk of the Parliaments].

Deposit of tramway map at the office of the Board of Trade.

25A. In the case [cases] of bills for laying down a tramway, an ordnance map of the district on a scale of not less than six inches to a mile, with the line of the proposed tramway marked thereon, and a diagram on a scale of not less than two inches to a mile, prepared in accordance with the specimen to be obtained at the office of the Board of Trade, *must* [shall] also be deposited at that office on or before the 30th of November.

See the map facing p. 327, *ante*.

Plans, &c. at the office of the Board of Trade.

27. In the case of railway, tramway, and canal bills, a copy of all plans, sections, and books of reference, required [by Order 24] to be deposited in the office of any clerk of the peace or sheriff clerk, on

or before the 30th day of November immediately preceding the application for the bill . . . shall on or before the same day be deposited in the office of the Board of Trade.

28. Where the work or any part thereof will be situate in London, or where powers are sought to take or use any lands compulsorily in London, a copy of so much of the plans, sections, and book of reference as relates to London shall, on or before the 30th day of November, be deposited at the office of the London County Council.

Deposit of plans and sections with London County Council.

29. Where, under the powers of any bill, any work is intended to be made, maintained, varied, extended, or enlarged, or any lands or houses may be taken or used compulsorily, or an improvement charge may be imposed, a copy of so much of the said plans and sections as relates to any of the areas hereinafter mentioned, together with a copy of so much of the book of reference as relates to such area, shall on or before the 30th day of November be deposited with the officer respectively hereinafter mentioned, that is to say, in the case of—

Deposit of plans, sections and books of reference.

- (a) The City of London or any borough in England or Wales, whether Metropolitan or other, with the town clerk of such city or borough :
- (b) Any urban district in England or Wales, not being a borough, with the clerk of the district council :
- (c) Any parish in England or Wales having a parish council, with the clerk of the parish council, or, if there is no clerk, with the chairman of that council :
- (d) Any parish in England or Wales comprised in a rural district, and not having a parish council, with the clerk of the district council :
- (e) Any burgh in Scotland, with the town clerk or clerk :
- (f) Any parish in Scotland outside a burgh with the clerk of the parish council :
- (g) Any urban or rural district in Ireland, with the clerk of the district council.

31. Wherever any plans, sections, and books of reference, or parts thereof, are required to be deposited, a copy of the notice published in the Gazette of the intended application to Parliament shall be deposited therewith.

Gazette notice to be deposited with plans, &c.

[Deposits on or before the 17th of December.]

[H. L. 32. *A printed copy of every local bill, proposed to be introduced into either House of Parliament, shall be deposited in the office of the Clerk of the Parliaments on or before the 17th day of December.*]

Printed copies of bills to be deposited in the Parliament Office.

Deposits on or before the 21st December.

[H. C.] 32. *Every petition for a private bill, headed by a short title descriptive of the undertaking or bill, corresponding with that at*

Petition for bill, with agent's declaration.

ration and bill to be deposited in Private Bill Office.

Declaration of agent as to class of bill, and powers thereof, to be annexed to petition.

the head of the advertisement, with a declaration, signed by the agent, and a printed copy of the bill annexed, shall be deposited in the Private Bill Office on or before the 21st day of December; and such petition, bill, and declaration shall be open to the inspection of all parties; and printed copies of the bill shall also be delivered therewith for the use of any member of the House or agent who may apply for the same. Such declaration shall state to which of the two classes of bills such bill in the judgment of the agent belongs; and if the proposed bill shall give power to effect any of the following objects that is to say:—

Power to take any lands or houses compulsorily, or to extend the time granted by any former Act for that purpose:

Power to levy tolls, rates, or duties, or to alter any existing tolls, rates, or duties; or to confer, vary, or extinguish any exemption from payment of tolls, rates, or duties, or to confer, vary, or extinguish any other right or privilege:

Power to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company:

Power to relinquish any part of a work authorised by a former Act:

The said declaration shall state which of such powers are given by the bill, and shall indicate in which clauses of the bill (referring to them by their number) such powers are given, and shall further state that the bill does not give power to effect any of the objects enumerated in this order other than those stated in the declaration.

If the proposed bill shall not give power to effect any of the objects enumerated in the preceding order, the said declaration shall state that the bill does not give power to effect any of such objects.

The said declaration shall also state that the bill does not give any powers other than those included in the notices for the bill.

Deposit of bills at the Treasury and other public offices.

33. On or before the 21st day of December, a printed copy shall be deposited:

- (1.) Of every *private* [*local*] bill at the office of His Majesty's Treasury at the Local Government Board and at the General Post Office;
- (2.) Of every *local* bill relating to Scotland or Ireland at the office of the Secretary for Scotland or the Irish Office, as the case may be;
- (3.) Of every [*local*] bill relating to railways, tramways, canals, gas, water, patents, or electric lighting, or for incorporating or giving powers to any company, at the office of the Board of Trade;

Deposit of bills with London County Council.

34. On or before the twenty-first day of December, a printed copy of every [*local*] bill of the second class which proposes to authorise any work in London, shall be deposited at the office of the London County Council.

Deposit of
statement
relating to
labouring
class houses.

38. Where any bill contains or revives or extends power to take compulsorily or by agreement any land in any local area as defined for the purposes of this order, and such taking involves or may involve the taking in any local area in London of twenty or more houses, or in any other local area of ten or more houses occupied either wholly or partially by persons of the labouring class, whether as tenants or lodgers, the promoters shall deposit in the Private Bill Office, and at the office of the central authority, on or before the 31st December, a statement of the number, description, and situation of all such houses, and the number (so far as can be ascertained) of persons residing therein, and also a copy of so much of the plan (if any) as relates thereto.

This order shall not apply where a statement in pursuance of this order was deposited in respect of the Act, the powers of which are proposed to be revived or extended.

For the purposes of this order—

The expression “local area” means—

- (1) as respects London the City of London; and any Metropolitan Borough.
- (2) as respects England and Wales (outside London), any borough, or other urban district; and elsewhere than in a borough or other urban district, any parish;
- (3) as respects Scotland, any district within the meaning of the Public Health (Scotland) Act, 1897; and
- (4) as respects Ireland, any urban district.

The expression “house” means any house or part of a house occupied as a separate dwelling.

The expression “labouring class” means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them:

The expression “Central Authority” means as regards London the Secretary of State for the Home Department, and as regards England and Wales (outside London), the Local Government Board, as regards Scotland the Secretary for Scotland, and as regards Ireland the Local Government Board for Ireland:

The expression “Bill” includes a *Bill confirming a Provisional Order* [*Provisional Order Confirmation Bill*].

Deposit of
plans, &c. in
case of Provi-
sional Orders
or certificates
in *Private*

39. Whenever plans, sections, books of reference, or maps are deposited in the case of a provisional order or *provisional* certificate, proposed to be made by any public department or county council, duplicates of the said documents shall also be deposited in the

Private Bill Office [*office of the Clerk of the Parliaments*], provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the thirtieth day of November in any year, such duplicates shall be so deposited on or before the thirtieth day of November.

Bill Office
[*Parliament Office*].

4. *Form in which Plans, Books of Reference, Sections and Cross Sections are to be prepared.*

PLANS.

40. Every plan required to be deposited shall be drawn to a scale of not less than four inches to a mile, and shall describe the lands which may be taken or used compulsorily, or on which an improvement charge may be imposed, or which are rendered liable to the imposition of an improvement charge, and in the case of bills of the second class, shall also describe the line or situation of the whole of the work (no alternative line or work being in any case permitted), and the lands in or through which it is to be made, maintained, varied, extended or enlarged, or through which any communication to or from the work may be made; and where it is the intention of the promoters to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every one hundred feet, an enlarged plan shall be added of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden, either in the line of the proposed work, or included within the limits of the said deviation, upon a scale of not less than a quarter of an inch to every one hundred feet.

Description.

Lands within limits of deviation to be on plan.

Buildings, &c. on enlarged scale.

45. In cases of bills for laying down a tramway, the plans shall indicate whether it is proposed to lay such tramway along the centre of any street [*or road*], and if not along the centre, then on which side of and at what distance from an imaginary line drawn along the centre of such street [*or road*], and whether or not, and, if so, at what point or points it is proposed to lay such tramway so that for a distance of thirty feet or upwards a less space than nine feet six inches, or if it is intended to run thereon carriages or trucks adapted for use upon railways a less space than ten feet six inches, shall intervene between the outside of the footpath on either side of the street [*or road*] and the nearest rail of the tramway.

Plans in the case of tramway bills.

All lengths shall be stated on the plan and section in miles, furlongs, chains, and decimals of a chain. The distances in miles and furlongs from one of the termini of each tramway shall be marked on the plan and section. Each double portion

of tramway, whether a passing-place or otherwise, shall be indicated by a double line. The total length of the [*street or*] road upon which each tramway is to be laid shall be stated (*i.e.*, the length of route of each tramway).

The length of each double and single portion of such tramway, and the total length of such double and single portions respectively shall also be stated.

In the case of double lines (including passing-places), the distance between the centre lines of each line of tramway shall be marked on the plans. This distance must in all cases be sufficient to leave at least fifteen inches between the sides of the widest carriages and engines to be used on the tramways when passing one another. The gradients of the [*street or*] road on which each tramway is to be laid shall be marked on the section. Every crossing of a railway, tramway, river, or canal shall be shown, specifying in the case of railways and tramways whether they are crossed over, under, or on the level.

All tidal waters shall be coloured blue.

All places where for a distance of thirty feet and upwards there will be a less space than nine feet six inches between the outside of the footpath on either side of the [*street or*] road and the nearest rail of the tramway shall be indicated by a thick dotted line on the plans on the side or sides of the line of tramway where such narrow places occur, as well as noted on the plan, and the width of the street or road at *those* [*these*] places *should* [*shall*] also be marked on the plans.

Tramroads.

The preceding paragraph shall apply in the case of a tramroad wherever it is carried along a street or road.

See sects. 9 and 34 of Tramways Act, 1870, and notes thereto.

BOOK OF REFERENCE.

Contents of
book of
reference.

46. The book of reference shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses which may be taken or used compulsorily, or upon which any improvement charge is imposed, or which are rendered liable to have an improvement charge imposed upon them, and shall describe such lands and houses respectively.

SECTIONS.

Scale of
section.

47. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every one hundred feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed work, the height of every embankment and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole

length of the work, or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section), near some portion of such work, and in the case of a canal, cut, navigation, public carriage road or railway, near either of the termini.

The distance of such fixed point above or below an ordnance bench mark in the locality of the proposed works, and near one of the termini, and the height of such bench mark above ordnance datum shall also be stated.

5. *Estimates and Deposit of Money, and Declarations in certain Cases.*

56. An estimate of the expense of the undertaking under each [local] bill of the second class shall be made and signed by the person making the same. Estimate in bills of the second class.

57. In the case of a railway bill or tramway bill, authorising the construction of works by other than an existing railway company or tramway company, incorporated by Act of Parliament, possessed of a railway or tramway, already opened for public traffic, and which has during the year last past paid dividends on its ordinary share capital, and which does not propose to raise under the bill a capital greater than its existing authorised capital, a sum not less than five per cent. on the amount of the estimate of expense, or in the case of substituted works, on the amount by which the expense thereof will exceed the expense of the works to be abandoned, . . . shall previously to the 15th day of January be deposited with the Paymaster-General for and on behalf of the Supreme Court of Judicature in England, if the work is intended to be done in England; or with the Paymaster-General for and on behalf of the Supreme Court of Judicature in England or *with the King's and Lord Treasurer's Remembrancer on behalf of* the Court of Exchequer in Scotland, if the work is intended to be done in Scotland; or with the Accountant-General of the Supreme Court of Judicature in Ireland, if the work is intended to be done in Ireland. Five per cent. . . . of estimate to be deposited.

58. Where the work is to be made, wholly or in part, by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, such parties being the promoters of the bill, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and showing the actual surplus of such funds or revenue, after deducting the funds required for purposes authorised by any Act or Acts of Parliament, and also the funds which may be required for any other work to be executed under any bill in the same session, and given under the common seal of the society or company, or under the hand of some authorised officer, of such Cases wherein declaration is deposited.

directors, trustees, or commissioners, may be deposited, and in such case no deposit of money shall be required in respect of so much of the estimate of expense as shall be provided for by such surplus funds.

Cases wherein declaration and estimate of rates may be deposited.

59. In cases [*the case*] of any bill under which no private or personal pecuniary profit or advantage is to be derived, and where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue already belonging to, or under the control of the promoters or to be created by or to arise under the bill, a declaration stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties or revenue, signed by the person making the same, may be deposited, and in such case no money deposit shall be required.

6. *Bills brought from the House of Lords* [Commons].

Deposit of bills brought from House of Lords [Commons].

60. A copy of every local bill brought from the House of *Lords* [Commons] shall, not later than two days after the bill is read a first time, be deposited at every office at which it was deposited under orders 33 and 34, or would be required to be deposited under those orders if it had been originally introduced as brought from the House of *Lords* [Commons].

Notices to be given and deposits made in cases where work is altered while bill is in Parliament.

61. Whenever, during the progress through the House of *Lords* [Commons] of any [*local*] bill of the second class originating in that House, any alteration has been made in any work authorised by such bill, proof shall be given before the examiners that a plan and section of such alteration, on the same scale and containing the same particulars as the original plan and section, together with a book of reference thereto, has been deposited in the *Private Bill Office* [*office of the Clerk of the Parliaments*] and with the clerk of the peace of every county, riding, or division in England or Ireland, and in the office of the sheriff clerk of every county in Scotland, in which such alteration is proposed to be made, and where any county in Scotland is divided into districts or divisions then also in the office of the principal sheriff clerk in and for each district or division in which such alteration is proposed to be made; and that a copy of such plan and section, so far as relates to any of the areas mentioned in Standing Order 29, together with a book of reference thereto, has been deposited with the officers respectively mentioned in that order, as the case may be, two weeks previously to the introduction of the bill into this House; and that the intention to make such alteration has been published previously to the introduction of the bill into this House in the London, Edinburgh or Dublin Gazette, as the case may be, and for two successive weeks in some one and the same newspaper of the county in which such

alteration is situate; and that application in writing, as nearly as may be in the form set forth in the Appendix marked (A), was made to the owners or reputed owners, lessees or reputed lessees, or in their absence from the United Kingdom, to their agents respectively, and to the occupiers of lands through which any such alteration is intended to be made; and the consent of such owners or reputed owners, lessees or reputed lessees, and occupiers, to the making of such alteration, shall be proved before the examiner. Compliance with this order shall not be necessary in the case of alterations made on petition for additional provision in the House of Lords [Commons].

7. *Provisions relating to the Consents of Proprietors or Members of Companies already constituted, and of Persons named as Directors.*

62. *Every bill originating in this House, promoted by a company already constituted by Act of Parliament, shall, after the first reading thereof, be referred to the examiners, who shall report as to compliance or non-compliance with the following order:—*

[H. L. *In the case of every bill, whether originating in this House or in the House of Commons, promoted by a company already constituted by Act of Parliament, proof shall be given before the examiner, before the second reading of the bill in this House, that the following requirements have been complied with, and the examiner shall report accordingly:—*]

The bill, as introduced or proposed to be introduced in this House [into Parliament], shall be submitted to the proprietors of such company at a meeting held specially for that purpose:

Such meeting shall be called by advertisement inserted once in each of two consecutive weeks in some one and the same newspaper published in London, Edinburgh, or Dublin, as the case may be, and in some one and the same newspaper of the county or counties in which the principal office or offices of the company is or are situate; and also by a circular addressed to each proprietor at his last known or usual address, and sent by post, or delivered at such address not less than ten days before the holding of such meeting, enclosing a blank form of proxy, with proper instructions for the use of the same; and the same form of proxy and the same instructions, and none other shall be sent to every such proprietor; but no such form of proxy shall be stamped before it is sent out, nor shall the funds of the company be used for the stamping any proxies, nor shall intimation be sent as to any person in whose favour the proxy may be granted, and no other circular or form of proxy relating to such meeting shall be sent to any proprietor from the office of the company, or by any director or officer of the company so describing himself:

Meeting of proprietors in the case of certain bills originating in this House.

Meeting of proprietors in case of bills promoted by an existing company having statutory powers.

Such meeting shall be held not earlier than the seventh day after the last insertion of such advertisement, and may be held on the same day as an ordinary general meeting of the company :

At such meeting the said bill shall be submitted to the proprietors aforesaid then present, and approved of by proprietors, present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented by the votes at such meeting, such proprietors being qualified to vote at all ordinary meetings of the company in right of such capital : the votes of proprietors of any paid-up shares or stock other than debenture stock, not qualified to vote at ordinary meetings, whose interests may be affected by the bill, if tendered at the meeting shall be recorded separately :

The names of the proprietors present in person at the meeting shall be recorded by the company. For this purpose the meeting, and any other consecutive meetings, whether general or special, and whether preceding or following it, shall be deemed to be the same meeting.

A poll may be demanded by any proprietor present in person at the meeting.

There shall be deposited at the *Private Bill Office* [*in the office of the Clerk of the Parliaments*] a statement of the number of votes, if a poll was taken, and of the number of votes recorded separately.

So far as any such bill relates to a separate undertaking in any company as distinct from the general undertaking, separate meetings shall be held of the proprietors of the company and of the separate undertaking, and the provisions of this order applicable to meetings of proprietors of the company shall, *mutatis mutandis*, apply to meetings of proprietors of the separate undertaking.

63. *Every bill originating in this House promoted by any company, society, association, or co-partnership formed or registered under the "Companies Act, 1862," or otherwise constituted (and not being a company to which the preceding order applies):—shall, after the first reading thereof, be referred to the examiners, who shall report as to compliance or non-compliance with the following order:—*

[H. L. *In the case of every bill, whether originating in this House or in the House of Commons, promoted by any company, society, association, or co-partnership formed or registered under the "Companies Act, 1862," or otherwise constituted (and not being a company to which the preceding order applies), proof shall be given before the examiner, before the second reading of the bill in this House, that the following requirements have been complied with, and the examiner shall report accordingly:—*

In the case of a company formed or registered under the "Companies Act, 1862,"

Bills originating in this House empowering certain companies to do certain acts to be approved by special resolution of company, &c. Meeting of members of limited companies, &c. in the case of bill promoted by a company, &c.

The bill, as introduced or proposed to be introduced *in this House [into Parliament]* shall be approved by a special resolution of the company.

In the case of any other such company, society, association, or co-partnership as aforesaid,

The bill as introduced or proposed to be introduced in this House, shall be consented to by a majority of three-fourths in number and (where applicable) in value of the proprietors, or members of such company, society, association, or co-partnership present, in person or by proxy, at a meeting convened with notice of the business to be transacted, and voting at such meeting, such consent to be certified in writing by the chairman of the meeting.

A copy of such special resolution or certificate of consent shall be deposited in the *Private Bill Office [office of the Clerk of the Parliaments]*.

The names of the proprietors or members present in person at the meeting shall be recorded by the company, society, association, or co-partnership. For this purpose the meeting, and any other consecutive meetings, whether general or special, and whether preceding or following it, shall be deemed to be the same meeting.

A poll may be demanded by any one proprietor or member present in person at the meeting, notwithstanding any provision to the contrary contained in any instrument constituting or regulating the company, society, association, or co-partnership.

If a poll is taken there shall be deposited in the *Private Bill Office [office of the Clerk of the Parliaments]* a statement of the number of votes.

So far as any such bill relates to a separate class of proprietors or members of any company, society, association, or co-partnership, as distinct from the proprietors or members generally, such bill shall be approved or assented to by the proprietors or members generally, and also by the separate class of proprietors or members, and the provisions of this order applicable to the proprietors or members generally shall, *mutatis mutandis*, apply to the separate class of proprietors or members.

64. In the case of every bill brought from the House of *Lords* [Commons], in which provisions have been inserted in that House, empowering the promoters thereof being a company already constituted by Act of Parliament to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking or any part thereof, or to enter into agreements with any other company for the working, maintenance, management or use of the railway or works of either company or any part thereof, or to amalgamate their undertaking or any part thereof with any other undertaking, or to purchase any

Meeting of proprietors in the case of certain bills originating in the House of *Lords* [Commons].

other undertaking or [*any*] part thereof, or any additional lands, or to abandon their undertaking or any part thereof, or to dissolve the said company, or in which any such provisions originally contained in the bill have been materially altered in that House, or in which any such powers are conferred on any company not being the promoters of the bill, the examiner shall report as to compliance or non-compliance with the following order [*requirements*] :

[The requirements are identical with those of S. O. 62.]

Bills from
Lords
[*Commons*]
in which
provisions
have been
inserted em-
powering
certain com-
panies to do
certain acts
to be approved
by special
resolution of
company, &c.

65. In the case of every bill brought from the House of *Lords* [*Commons*], in which provisions have been inserted in that House empowering or requiring any company, society, association, or co-partnership formed or registered under the "Companies Act, 1862," or otherwise constituted and not being a company to which the preceding order applies, to do any act not authorised by the memorandum and articles of association of such company, or other instrument constituting or regulating such company, society, association, or co-partnership, or authorising or enacting the abandonment of the undertaking or any part of the undertaking of any such company, society, association, or co-partnership, or the dissolution thereof, or in which any such provisions originally contained in the bill have been materially altered in that House, or by which any such powers are conferred on any company, society, association, or co-partnership not being the promoters of the bill, the examiner shall report as to compliance or non-compliance with the following order [*requirements*]:—

[The remainder of the order follows S. O. 63, with the addition of the following provisoes after the fifth requirement:—]

Provided always, that if by the terms of such special resolution or consent the bill as introduced or proposed to be introduced into the House of *Lords* [*Commons*] shall have been approved or consented to, subject to such additions, alterations, and variations as Parliament may think fit to make therein, then it shall not be necessary for the purposes of this order to obtain any further approval or consent in respect of any provisions inserted in the bill in the House of *Lords* [*Commons*]: Provided nevertheless, that it shall be competent for the committee on the bill, if they think fit, having regard to the nature and effect of such provisions, to require any further evidence of the approval or consent to such provisions on the part of the shareholders or members of the company, society, association, or co-partnership.

Proof to be
required be-
fore examiner
of consent of
proprietors
of any com-
pany to sum

66. When any bill as introduced into Parliament, or as amended or proposed to be amended on petition for additional provision, contains a provision authorising any company incorporated by Act of Parliament or any class of holders of share or loan capital in any such company to subscribe or to alter the terms or conditions of any

subscription towards or to guarantee or to raise any money in aid of the undertaking of another company (which bill is not brought in by the company so authorised, or of which such company is not a joint promoter), proof shall be required before the examiner before the second reading in this House, if such provision is contained in the bill as introduced into Parliament that the company, or the class of holders of share or loan capital, so authorised has consented to such subscription, alteration, guarantee or raising of money at a meeting of the proprietors of the company, or of any such class of holders of share or loan capital as the case may be, held specially for that purpose, in the same manner and subject to the same provisions as the meeting directed to be held under *Standing Order* 64; and in case such provision is contained in the bill as introduced into Parliament that the notices for the bill state the specific sum (if any), proposed to be subscribed, or guaranteed or raised, or the alteration of the terms or conditions of the subscription, as the case may be, or in case such provision shall be proposed to be inserted in the bill on a petition for additional provision that notices stating the specific sum (if any), proposed to be subscribed or guaranteed, or raised, or the alteration of the terms or conditions of the subscription, as the case may be, and stating that the consent of the company, or of such class of holders of share or loan capital, has been given as aforesaid, have been published once in the London, Edinburgh, or Dublin Gazette, as the case may be, and in the county newspapers in which the notices for the bill were published for two successive weeks during the six weeks immediately preceding the presentation of such petition for additional provision.

In any case in which such consent has been given, it shall not be necessary to submit the bill in respect of such provision as aforesaid to the approval of a meeting, to be held in accordance with *Standing Order* 64.

68. When in any bill brought from the House of *Lords* [*Commons*], for the purpose of establishing a company for carrying on any work or undertaking, any person is specified as manager, director, proprietor, or otherwise concerned in carrying such bill into effect, proof shall be required before the examiner that such person has subscribed his name to the petition for the bill, or to a printed copy of the bill as brought up to this House.

authorised to be raised in aid of undertaking of another company.

Consent of directors, &c. who are named in a bill, to be proved.

III.—PROCEEDINGS OF, AND IN RELATION TO, THE EXAMINERS.

REFERENCE OF BILLS, &c. TO, AND DUTIES OF AND PRACTICE BEFORE, EXAMINERS.

74. [H. L. 73.] Any parties shall be entitled to appear and to be heard, by themselves, their agents and witnesses, upon a memorial

Memorials complaining of non-com-

pliance with
Standing
Orders.

addressed to the examiner, complaining of a non-compliance with the Standing Orders, provided the matter complained of be specifically stated in such memorial and the party (if any) who may be specially affected by the non-compliance with the Standing Orders have signed such memorial and shall not have withdrawn his signature thereto, and such memorial have been duly deposited in the *Private Bill Office*.

Proprietors
dissenting at
meeting may
petition and
be heard.

75. [H. L. 74.] In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership, shall, by himself, or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of Standing Orders 62 to 66 [Nos. 62, 63, 64, 65 or 66], such proprietor, shareholder, or member shall be permitted to be heard by the examiner of petitions, on the compliance with such Standing Order, by himself, his agents and witnesses, on [upon] a memorial addressed to the examiner, *such memorial having been duly deposited in the Private Bill Office*.

PROCEEDINGS OF COMMITTEES ON OPPOSED BILLS.

Petition
against bill
to specify
grounds of
objection.

[H. C.] 128. *No petition against a private bill or a bill to confirm any provisional order or provisional certificate shall be taken into consideration by the committee on such bill, which shall not distinctly specify the ground on which the petitioners object to any of the provisions thereof; and the petitioners shall be only heard on such grounds so stated; and if it shall appear to the said committee that such grounds are not specified with sufficient accuracy, the committee may direct that there be given in to the committee a more specific statement in writing, but limited to such grounds of objection so inaccurately specified.*

When petition
against bill to
be presented.

[H. C.] 129. *No petitioners against any private bill or any bill to confirm any provisional order or provisional certificate shall be heard before the committee on the bill, unless their petition shall have been prepared and signed in strict conformity with the Rules and Orders of this House, and shall have been presented to this House by having been deposited in the Private Bill Office, in the case of private bills, not later than ten clear days after the first reading of such bill, and in the case of bills to confirm any provisional order or provisional certificate, not later than seven clear days after notice shall have been given of the day on which the bill will be examined, except where the petitioners shall complain of any matter which may have arisen during the progress of the bill before the said committee, or of any proposed additional provision, or of the amendments as proposed in the filled up bill deposited in the Private Bill Office.*

Time for
presenting
petitions
praying to be

[H. L. 92. *No petition praying to be heard upon the merits against any local bill or Provisional Order Confirmation Bill originating in this House shall be received by this House, unless the same is*

presented by being deposited in the Private Bill Office before three o'clock in the afternoon on or before the seventh day after the day on which such bill has been read a second time.

heard against bills originating in this House.

[H. L. 93. No petition praying to be heard upon the merits against any local bill or any Provisional Order Confirmation Bill brought from the House of Commons shall be received by this House, unless the same be presented by being deposited in the Private Bill Office before three o'clock in the afternoon on or before the seventh day after the day on which such bill has been read a first time.]

Time for presenting petitions praying to be heard against bills originating in the House of Commons.

[H. C.] 130. *It shall be competent to the referees on private bills to admit petitioners to be heard upon their petitions against a private bill, on the ground of competition, if they shall think fit.*

Competition a ground of locus standi.

[H. C.] 131. *Where a bill is promoted by an incorporated company shareholders of such company shall not be entitled to be heard, before the committee against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company.*

In what cases shareholders to be heard.

132. [H. L. 105.] In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership, shall by himself or any person authorised to act for him in that behalf, have dissented at any meeting called, in pursuance of Standing Orders 62 to 66 [Nos. 62, 63, 64, 65 and 66], or at any meeting called in pursuance of any similar *Standing Order* of the House of Lords [Commons], such proprietor, shareholder, or member shall be permitted [on petitioning the House] to be heard by the committee on the bill [by himself, his counsel, or agents and witnesses] on a petition presented to the House, such petition having been duly deposited in the Private Bill Office.

Dissenting shareholders to be heard.

See *ante*, p. 38.

133B. [H. L. 105B.] Where a Chamber of Agriculture, Commerce, or Shipping, or a Mining or Miners' Association sufficiently representing the agriculture, trade, mining, or commerce in any district to which any bill relates, petition against the bill alleging that such agriculture, trade, mining, or commerce, will be injuriously affected by the provisions contained therein [in the bill], it shall be competent for the referees on private bills [select committee to whom the bill is referred], if they think fit, to admit the petitioners to be heard [hear the petitioners or their counsel or agents and witnesses] on such allegations against the bill or any part thereof.

Chamber of Agriculture, &c. may be heard if injuriously affected.

[H. C.] 134. *It shall be competent to the referees on private bills to admit the petitioners, being the municipal or other authority having the local management of the metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill, if they shall think fit.*

Municipal authorities and inhabitants of towns.

As to local authorities, see *ante*, p. 31; as to inhabitants, *ante*, p. 29.

[H. C.] 134B. *It shall be competent to the referees on private bills County*

Council alleged to be injuriously affected by bill.

to admit the petitioners, being the council of any administrative county or county borough, the whole or any part of which is alleged to be injuriously affected by a bill, to be heard against such bill if they think fit.

County Council alleged to be injuriously affected by bill may be heard.

[H. L. 105c. *Where the council of any administrative county or county borough petition against a bill alleging that such county or county borough or some part thereof will be injuriously affected by the bill, it shall be competent for the select committee to whom the bill is referred, if they think fit, to hear such petitioners or their counsel or agents and witnesses on such allegation against the bill or any part thereof.*]

County Council to have a locus standi against a tramway bill.

131c. [H. L. 105d.] The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected . . . (b) by the provisions of any bill proposing to authorise the construction or reconstruction of any tramway along any main road, or along any other road to the maintenance and repair of which the County Council contributes, within the administrative county, shall be entitled to be heard against such bill.

Petitions against tramway bills.

[H. C.] 135. *The owner, lessee, or occupier of any house, shop, or warehouse in any street through which it is proposed to construct any tramway, and who alleges in any petition against a private bill or provisional order that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the use or enjoyment of his premises or in the conduct of his trade or business, shall be entitled to be heard on such allegations before any select committee to which such private bill or the bill relating to such provisional order is referred.*

See *ante*, p. 21.

PROCEEDINGS OF, AND IN RELATION TO, COMMITTEES ON BILLS, WHETHER OPPOSED OR UNOPPOSED.

Consents, how to be proved.

[H. C.] 143. *The committee may admit proof of the consents of parties concerned in interest in any private bill, by affidavits, sworn as aforesaid, or by the certificate in writing of such parties, whose signatures to such certificate shall be proved by one or more witnesses, unless the committee shall require further evidence.*

Committee to report specially on railway, &c. bills seeking powers to levy tolls, &c., in excess of those already authorised.

[H. C.] 145A. *In the case of any bill relating to a railway, tramway, canal, dock, harbour, navigation, pier, or port, seeking powers to levy tolls, rates, or duties in excess of those already authorised for that undertaking, or usually authorised in previous years for like undertakings, the bill shall not be reported by the committee until a report from the Board of Trade on the powers so sought has been laid before the committee; and the committee shall report specially to the House in what manner the recommendations or observations in the report of*

the Board of Trade, and also in what manner the clauses of the bill relating to the powers so sought have been dealt with by the committee.

Applied to tramroad bills by Standing Order 168A.

[H. C.] 151. *Whenever the House shall order that any bill for confirming a provisional order or a provisional certificate be referred to the committee of selection with respect to any order or certificate to be confirmed thereby, the proceedings of the select committee to which the bill is referred, and of the referees, shall be conducted in like manner as in the case of private bills, and shall be subject to the same rules and orders of the House, so far as they are applicable, except those which relate to the payment of fees by the promoters of such provisional order or certificate.*

Proceedings on bills for confirming Provisional Orders, &c.

Railway, Tramroad, Tramway and Subway Bills.

[H. C.] 153. *In the case of a railway or tramway bill, a company shall not be authorised to raise, by loan or mortgage, a larger sum than one-third of their capital; or until fifty per cent. on the whole of the capital shall have been paid up, to raise any money by loan or mortgage unless the committee on the bill shall report that such restrictions, or either of them, ought not to be enforced, with the reasons on which their opinion is founded.*

Restriction as to mortgage.

[H. L. 112. *In the case of a railway bill a company shall not be authorised to raise by mortgage or debenture stock a larger sum than one-third of their capital; or until fifty per cent. on the whole of the capital has been paid up, to raise any money by mortgage or debenture stock.*

Restrictions as to mortgage in railway bills.

In the case of a tramway bill a company shall not be authorised to raise by mortgage a larger sum than one-third of their capital, or, until fifty per cent. on the whole of the capital has been paid up, to raise any money by mortgage.]

155. [H. L. 113.] *No railway whereon carriages are moved by mechanical power shall be authorised to be made across any railway, tramway, tramroad, or public carriage-road on the level, unless a report thereupon [thereon] from some [the proper] officer of the Board of Trade shall be laid before the committee on the bill [recommend such level crossing], or the committee on the bill, after considering such report, and hearing the officer, if the committee think fit, be of opinion that any level crossing not recommended thereby should be authorised, in which case they shall report accordingly, with the reasons and facts upon which their opinion is founded; and in every clause authorising a level crossing, the number of lines of rails authorised to be made at such crossing shall be specified.*

Railway not to cross railways, tramways or roads on a level unless committee report, &c.

See *ante*, pp. 19, 40. Applied in House of Lords to tramroad bills by S. O. [H. L.] 133B.

Clause to be inserted in railway, tramway, and subway bill imposing penalty unless line be opened.

158. [H. L. 114.] In every railway bill [*and*] tramway bill *and subway bill* whereby the construction of any new line of railway [*or*] tramway *or subway* is authorised, or the time for completing any line already authorised is extended, promoted by an existing railway company [*or*] tramway company *or subway company* which is possessed of a railway [*or*] tramway *or subway* already opened for public traffic, and which has during the year last past paid dividends on its ordinary share capital, and which does not propose to raise under the bill a capital greater than its existing authorised capital, there shall be inserted a clause to the following effect; viz.,

- (A.) If the company fail within the period limited by this Act to complete the railway or tramway authorised to be made by this Act, the company shall be liable to a penalty of fifty pounds a day for every day after the expiration of the period so limited until the said railway [*or*] tramway, *or subway* is completed and opened for public traffic [*or if a passenger railway, for the public conveyance of passengers*], or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works; and the said penalty may be applied for by any [*road authority*] landowner or other person claiming to be compensated or interested, in accordance with the provisions of the next following section of this Act, and in the same manner as the penalty provided in the 3rd section of the Act 17 & 18 Vict. c. 31, known as "The Railway and Canal Traffic Act, 1854," and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such Court or judge as is specified in the said 3rd section *of the Act 17 & 18 Vict. c. 31*, to an account opened or to be opened in the name and with the privity of the Paymaster-General for and on behalf of the Supreme Court in England [the King's Remembrancer of the Court of Exchequer in Scotland, or the Accountant-General of the Supreme Court in Ireland (according as the railway, tramway, or subway is situate in England, Scotland, or Ireland)], in the bank *named in such order* [*and to the credit specified in such warrant or order*], and shall not be paid thereout except as hereinafter provided; but no penalty shall accrue in respect of any time during which it shall appear, by a certificate to be obtained from the Board of Trade, that the company was prevented from completing or opening such line by unforeseen accident or circumstances beyond their control: Provided, that the want of sufficient funds shall not be held to be a circumstance beyond their control.

Railway, Tramway and Subway Deposits.

[158. H. L. 115.] In every railway bill *[or]* tramway bill *or* subway bill whereby the construction of any new line is authorised, or the time for completing any line already authorised is extended, if such bill be promoted *[by, or on behalf of, a railway or tramway company to be thereby incorporated or]* by an existing railway company *[or]* tramway company *or* subway company which is not possessed of a railway *[or]* tramway *or* subway already opened for public traffic, or which has not during the year last past paid dividends on its ordinary share capital, or by an existing railway company *[or]* tramway company *or* subway company when the capital to be raised under the bill is greater than the existing authorised capital of the company, *or by persons not already incorporated*, there shall be inserted a clause to the following effect; viz.,

Clause to be inserted providing that deposit be impounded as security for completion of the line.

(B.) Whereas, pursuant to the Standing Orders of both Houses of Parliament and to the Parliamentary Deposits Act, 1846, a sum of *£* , being five per cent. upon the amount of the estimate in respect of the railway or tramway authorised by this Act, has been deposited with *the Court, that is to say*, the Paymaster-General for and on behalf of the Supreme Court *[in England]* *[or [with] the Court of Exchequer in Scotland or the Accountant-General of the Supreme Court [in Ireland] as the case may be]*, *[or exchequer bills, stocks or funds to the amount of* *£* *have been deposited or transferred pursuant to the said Act, as the case may be]*, in respect of the application to Parliament for this Act (which sum, exchequer bills, stocks or funds, as the case may be, is or are in this Act referred to as “the deposit fund”): Be it enacted, that notwithstanding anything contained in the *said recited [above-mentioned] Act*, the *[said]* deposit fund shall not be paid or transferred to or on the application of the person or persons, or the majority of the persons named in the warrant or order issued in pursuance of the said Act, or the survivors or survivor of them (which persons, survivors, or survivor, are or is in this Act referred to as the “depositors”), unless the company shall, previously to the expiration of the period limited by this Act for completion of the railway *[[or] tramway or subway]* hereby authorised to be made *[or the time for completing which is hereby extended]*, open the said railway *[[or] tramway or subway]* for public traffic *[or if a passenger railway for the public conveyance of passengers]*, and if the company shall make default in so opening the said railway *[[or] tramway or subway]* the deposit fund shall be applicable, and shall be applied as

provided by the next following section. And to such clause the committee may, if they think fit, add a proviso to the following effect: Provided, that if within such period as aforesaid the company open any portion of the said railway [*or*] tramway *or* subway] for public traffic [*or*, if a passenger railway, for the public conveyance of passengers], then on production of a certificate of the Board of Trade, specifying the length of the portion of the said railway [*or*] tramway *or* subway] opened as aforesaid, and the portion of the deposit fund which bears to the whole of the deposit fund the same proportion as the length of the said railway [*or*] tramway *or* subway] so opened bears to the entire length of the said railway [*or*] tramway *or* subway] hereby authorised, the High Court [*Court*] shall, on the application of the depositors [*or the majority of them*], order the said portion of the deposit fund so specified in such certificate as aforesaid to be paid or transferred to them, or as they shall direct; and the certificate of the Board of Trade shall, if signed by the secretary, or by an assistant secretary of the said board, be sufficient evidence of the facts therein certified; and it shall not be necessary to produce any certificate of this Act having passed, anything in the recited Act to the contrary notwithstanding.

The Standing Order is applied to tramroad bills by Standing Order 168A [H. L. 133B].

Clause to be inserted providing for application of deposit or penalty in compensation to parties injured.

[158. H. L. 116.] In every railway bill, [*or*] tramway bill, *or* subway bill, whereby the construction of any new line of railway, [*or*] tramway, *or* subway, is authorised, or the time for completing any line already authorised is extended, *a clause to the following effect shall be inserted* [*the following clauses shall be inserted in the order in which they are here placed immediately after Clause A. or Clause B., whichever shall have been inserted in the bill, viz.*]:—

Application of deposit or penalty in compensation to parties injured.

- (C.) If the company do not, previously to the expiration of the period limited by this Act for the completion of the railway [*or*] tramway *or* subway] hereby authorised to be made (or the time for completion of which is hereby extended) complete the said railway [*or*] tramway *or* subway] and open it for public traffic [*or*, if a passenger railway, for the public conveyance of passengers], then and in every such case the deposit fund or so much thereof as shall not have been paid to the depositors, or any sum of money recovered by way of penalty as aforesaid, shall be applicable, and, after due notice in the London Gazette, or Edinburgh or Dublin Gazette, as the case may require, shall be applied towards

compensating any landowners, or other persons whose property may have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the said railway [*or*] tramway *or subway* or any portion thereof, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by this Act [and also (in the case of a tramway) in compensating all road authorities for the expense incurred by them in taking up any tramway or materials connected therewith placed by the company in or on any road vested in or maintainable by such road authorities respectively, and in making good all damage caused to such roads by the construction or abandonment of such tramway], and shall be distributed in satisfaction of such compensation as aforesaid, in such manner and in such proportions as to the Court may seem fit; and if no such compensation shall be payable, or if a portion of the deposit fund [or of the sum or sums of money recovered by way of penalty as aforesaid] shall have been found sufficient to satisfy all just claims in respect of such compensation, then the deposit fund [or the sum or sums of money recovered by way of penalty as aforesaid], or such portion thereof as may not be required as aforesaid, shall, if a receiver has been appointed or the company is insolvent *and has been ordered to be wound up*, or the undertaking [in the case of a penalty, the railway or railways in respect of which the penalty has been incurred or any part thereof] has been abandoned, be paid or transferred to such receiver, or to the liquidator or liquidators of the company, or be applied in the discretion of the Court as part of the assets of the company for the benefit of the creditors thereof, and subject to such application, shall be repaid or retransferred to the depositors [company] provided that until the deposit fund shall have been repaid to the depositors or shall have become otherwise applicable as hereinbefore mentioned, any interest or dividends accruing thereon shall, from time to time, and as often as the same shall become payable, be paid to, or on the application of the depositors:

N.B.—If the clause lettered (A.) is inserted in the bill, the proviso at the end of the clause lettered (C.) shall be omitted. . . .

- (D.) If the railway [or tramway] authorised by this Act shall not be completed within the period limited by this Act, then, on the expiration of such period, the powers by this Act granted to the company for making and completing the said railway [or tramway] or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall

Time limited
for comple-
tion of line.

then be completed. *The period limited shall not in the case of a new railway, tramroad, or tramway line exceed five years, and the extension of time for completion shall not exceed three years, unless the committee on the bill think fit, in the special circumstances of the case to allow a longer period. In the case of extension of time the additional period shall be computed from the expiration of the period sought to be extended.*

As to the provisions for the repayment of deposits, see the notes to sect. 12 of Tramways Act, 1870, and Parliamentary Deposits and Bonds Act, 1892. The Standing Order is applied to tramroad bills by Standing Order 168A [H. L. 133B].

If work not completed within time limited, powers to cease.

[H. L. 107. *In every local bill of the second class, a clause shall be inserted to the effect that in case the work thereby authorised be not completed, within a period to be limited, all the powers and authorities given by the bill shall thenceforth cease and determine, save only as to so much of such work as has been completed within such time, with such provisions and qualifications as the nature of the case shall require. Such period shall not exceed in the case of a new railway, tramroad, or tramway, five years, and in the case of extension of time three years, unless the committee on the bill think fit in the special circumstances of the case to allow a longer period. In the case of extension of time the additional period shall be computed from the expiration of the period sought to be extended.*]

Clause prohibiting use of compulsory powers may be inserted in bills promoted merely to serve private interests.

[H. L. 117. *If the committee on any railway bill or tramway bill decide that general compulsory powers to enter upon, take, or use lands for the purposes of any railway or tramway ought not to be given on the ground that the direct object of such railway or tramway is to serve private interests in any lands, mines, manufactories, or other property, the committee may insert a clause or proviso to that effect:*

If the bill contains a penalty clause,—

That no penalty shall accrue in respect of such railway or tramway, if it shall appear by a certificate to be obtained from the Board of Trade that the company was prevented by the want of such compulsory powers from making such railway or tramway, without incurring unreasonable delay, inconvenience or expense:

If a deposit has been made,—

That the High Court [Court of Exchequer in Scotland] may and shall at any time on the application of the persons named in the warrant or order issued in pursuance of the said Parliamentary Deposits Act, 1846, or of the survivors or survivor of them, or of the majority of such persons or survivors, or the legal personal representatives of the last survivor, and on the production of a certificate to be obtained from the Board of Trade that the company was prevented by want of such compulsory powers from making such railway or tramway without incurring unreasonable delay, inconvenience, or expense, order that the cash or

exchequer bills, stocks or funds, as the case may be, deposited or transferred in respect of such railway or tramway, and the interest or dividends thereon, may be paid or transferred to the person or persons so applying, or to any other person or persons whom they or he may appoint in that behalf.]

Applied to tramroad bills by Standing Order [H. L.] 133B.

[158. H. L. 118.] In any railway bill or tramway bill to which the preceding provisions are not applicable, the committee on the bill shall make such other provision as they shall deem necessary for ensuring the completion of the line of railway or tramway.

[H. C.] 158A. *In the case of every bill authorising the abandonment of a railway, tramway, or subway, or of any part thereof, and the release of any deposit money impounded as security for the completion thereof, a report from the Board of Trade respecting the bill and the objects thereof shall be presented to this House, and be referred to the committee on the bill, and the committee shall report specially to the House in what manner the several recommendations contained in the report from the Board of Trade have been dealt with by the committee.*

Where preceding provisions are inapplicable.

In case of bill for abandonment of railway, tramway, or subway, and release of deposit money, committee to report.

Applied to tramroad bills by Standing Order 168A.

[H. L. 124. *When by any bill powers are applied for to amalgamate with any other company, or to sell or lease the undertaking, or any part thereof, or to purchase or take on lease the undertaking of any other company, public body or private undertakers, or any part thereof, or to enter into a working agreement, otherwise than under the provisions of Part III. (Working Agreements) of the Railways Clauses Act, 1863, as amended by the Railway and Canal Traffic Acts, 1873 and 1888, the company, person or persons, with, to, from, or by whom, and the terms and conditions on which it is proposed that such amalgamation, sale, purchase, lease, or working agreement shall be made, shall be specified in the bill as introduced into Parliament.]*

Terms of proposed amalgamation, &c. to be specified in bill.

Tramroad Bills.

168B. [H. L. 133C.] In every bill for the construction of a tramroad of railway gauge, and intended to communicate with a railway, a clause shall be inserted that the provisions of the Railway and Canal Traffic Act, 1854, and of the Railway and Canal Traffic Acts, 1873 and 1888, shall apply to the company as if they were a railway or canal company, and to the tramroad to be authorised by the Act as if such tramroad were a railway or canal.

Application of Railway and Canal Traffic Act, &c. to tramroads.

168C. [H. L. 133D.] In every tramroad bill the length of so much of any tramroad as is to be constructed along any street or road, or upon any street or road, or upon any waste or open ground by the side of any street or road, shall be set forth in miles,

Length of tramroad along street or road to be stated.

furlongs, chains, and links or yards or decimals of a chain, in the clause describing the works.

Railway
[and tramway]
not to be
exempt from
any General
Act.

169. [H. L. 132.] The following clause shall be inserted in all railway bills [and tramway bills] passing through this House:—

And be it further enacted that nothing herein contained, shall be deemed or construed to exempt the railway [tramway] by this or the said recited Acts authorised to be made from the provisions of any general Act relating to railways [tramways] now in force, or which may hereafter pass during this or any future session of Parliament, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges authorised by this Act [or by the said recited Acts].

Length of
railway,
tramway and
subway to
be set forth
in clause
describing
the works.

170. [H. L. 131.] In every railway bill, [and] tramway bill, and subway bill, the length of each railway, [and] tramway, and subway shall be set forth in miles, furlongs, chains, and [links or] yards, or decimals of a chain, in the clause describing the works, with a statement in the case of each tramway whether it is a single or a double line. [*Two lines of tramway running side by side shall be described as a double line.*]

Tramway Bills.

No powers for
construction,
acquisition,
or taking on
lease of tram-
way to be
given to a
local autho-
rity except
under special
local circum-
stances.

170A. [H. L. 133.] No powers shall be given to any local authority to construct, acquire, take on lease or work any tramway or portion of tramway beyond the limits of their district, unless such tramway or portion of tramway is in connection with the tramway, belonging to or authorised to be constructed, acquired or worked by the local authority, and unless the committee on the bill shall determine that, having regard to the special local circumstances, such construction, acquisition, taking on lease or working ought to be sanctioned.

In every case in which the committee shall so determine they shall specify what portion of the tramway will be situate beyond the district of the local authority to which the power of construction, acquisition, or taking on lease is given, and shall insert a clause for the protection of the local authority of the district in which such tramway or portion of tramway will be situate in the terms, *mutatis mutandis*, of section 43 of the Tramways Act, 1870, except that the committee may, if they think fit, in the special circumstances of the case, substitute a period not exceeding forty-two years for the period of twenty-one years mentioned in that section.

Where a local
authority are
empowered
to work tram-
ways, power
may be given
to enter into
agreements
for running

171. [H. L. 133A.] Where a local authority are empowered to work any tramways belonging to or authorised to be constructed or acquired by them, the committee on the bill may, if they think fit under the special circumstances of the case, empower the local authority to enter into agreements for running powers over any tramways in connection with the tramways so worked or to be

worked by them; and such running powers shall be deemed to be a purpose of the Public Health Act, 1875, and the expenses of the exercise of such powers shall, in the event of deficiency in the tramway account, be defrayed out of a local rate, as defined by the Tramways Act, 1870. Provided that in any such case the committee on the bill shall make provision—

powers over
connected
tramways.

- (1.) That no such agreement shall have effect until approved by the Board of Trade.
- (2.) That all enactments, by-laws, and regulations relating to the use of or the running of carriages upon the tramways, and the taking of tolls and charges therefor, shall so far as applicable extend and apply, *mutatis mutandis*, to and shall be observed by the local authority exercising such running powers.
- (3.) That such running powers shall in no case be exclusive, and shall cease unconditionally at the expiration of seven years from the date of the agreement.
- (4.) That further agreements for the exercise of such running powers may be made from time to time with the approval of the Board of Trade for any period not exceeding seven years, provided that such powers shall cease unconditionally at the expiration of the period for which the same are given.
- (5.) That all questions in dispute as to the construction of or arising in consequence of such agreements shall be determined by arbitration.

And the committee shall report the circumstances specially to the House.

Local Government Bills.

172. [H. L. 134.] In the case of any bill whereby any municipal corporation, district council, [*improvement commissioners*,] joint board, or joint committee, or other local authority in England or Wales, are authorised to borrow money for any purpose within the jurisdiction of the Board of Trade or the Local Government Board, estimates, showing the proposed application of the money for permanent works shall, except so far as the exercise of the borrowing power is made subject to the sanction of the respective Board, be recited in the bill as introduced into Parliament, and proved before the select committee to which the bill is referred [*committee*].

Borrowing
powers of
local authorities.

[H. C.] 208A. *Every bill for confirming provisional orders or provisional certificates shall after the second reading stand referred to the Committee of Selection, or to the General Committee on Railway and Canal Bills as the case may require, and be subject to the Standing Orders regulating the proceedings upon private bills so far as they are applicable, provided that when any order or certificate contained in any such bill is opposed, the committee to whom such opposed order or*

*Provisional
Order Bills
to stand
referred to
Committee of
Selection or
General Com-
mittee on
Railway and*

Canal Bills, &c. *certificate is referred shall consider all the orders or certificates comprised in such bill.*

VI.—ORDERS FOR PURPOSES OF THE PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899.

Definitions.

250. [H. L. 182.] In the following Orders—

The expression “the Procedure Act” means the Private Legislation Procedure (Scotland) Act, 1899.

The expression “substituted bill” means a bill promoted in lieu of a Provisional Order or part thereof which the Secretary for Scotland has refused to issue.

Substituted Bills.

Deposit of substituted bill at public departments.

255. [H. L. 187.] Where under the provisions of section 2 of the Procedure Act the Secretary for Scotland has refused to issue a Provisional Order or part thereof, and the petitioners for the Order desire to promote a bill for the same objects as were sought by the draft Provisional Order, or such part, the promoters shall, on or before the seventh day after the notification to them of the refusal of the Secretary for Scotland to issue the Provisional Order or part, deposit a copy of the substituted bill [*in the office of the Clerk of the Parliaments and*] in every office of a public department or other office in which copies of the draft Provisional Order were, under General Orders, made in pursuance of the Procedure Act, required to be deposited.

In the case of petitions for Provisional Orders deposited on or before the seventeenth day of April, which are directed to be proceeded with as bills, the substituted bills may be deposited on or before the ensuing seventeenth day of December, and all notices given, or other proceedings taken, in respect of such petitions and substituted bills, shall be applicable to such bills.

Proofs before examiners.

256. [H. L. 188.] In the case of a substituted bill, the service of such notices to opponents as are required by section 2 of the Procedure Act shall be proved before one of the examiners, but where compliance with the corresponding General Order is proved it shall not be necessary to prove compliance with Standing Orders 3 to 68; and the notices published and served, and the deposits made for the Provisional Order, or for such part, shall be held to have been published, served, and made respectively for such bill.

No provisions not contained in draft Provisional Order to be inserted in substituted bill.

257. [H. L. 189.] Provisions which were contained in a draft Provisional Order may be omitted from the substituted bill, but no provisions shall be inserted in any substituted bill as deposited which were not contained in the draft Provisional Order; and the examiner shall certify whether this Order has or has not been complied with.

258. [H. L. 190.] A copy of every substituted bill brought from the House of *Lords* [*Commons*] shall, not later than two days after the bill is read a first time, be deposited at every office at which the draft Order was deposited under General Order 33, or would be required to be deposited under that Order, if the draft Order as originally applied for had contained the same provisions as the substituted bill so brought from the House of *Lords* [*Commons*].

Deposit of substituted bills brought from H. C.

259. [H. L. 189A.] All petitions deposited at the office of the Secretary for Scotland, pursuant to General Orders in favour of or against a draft Provisional Order shall, on transmission from the office of the Secretary for Scotland, be received as if duly deposited in favour of or against the substituted bill.

Petitions respecting Draft Orders to apply to substituted bills.

APPENDIX.

[FORM referred to in Orders 11 and 61, pages 386 and 396.]

(A.)

No.

SIR,

We beg to inform you, that application is intended to be made to Parliament in the ensuing session for "An Act" [*here insert the title of the Act*], and that the property mentioned in the annexed schedule, Part I., or some part thereof, in which we understand you are interested as therein stated, will be liable to be taken compulsorily for the purposes of the said undertaking [and that the property mentioned in the annexed schedule, Part II., in which we understand you are interested as therein stated, will be liable to have an improvement charge imposed upon it].

We also beg to inform you, that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the [*several clerks of the peace, or principal sheriff clerks, as the case may be*] of the counties of [*specify the counties in which the property is situate*], on or before the 30th of November, and that copies of so much of the said plan and section as relates to the [*parish or other area in accordance with the terms of Standing Order 29, as the case may be*] in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the [*clerk or other officer in the said Order respectively mentioned, as the case may be*], on or before the 30th day of November, on which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent or neutrality in the form left herewith, and returning the same to us with your signature on or before the — day of — next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof,

at your earliest convenience, that we may correct the same without delay.

We also beg to inform you that it is intended that the Act shall provide to the effect that, notwithstanding section 92 of The Lands Clauses Consolidation Act, 1845, [*or* section 90 of The Lands Clauses Consolidation (Scotland) Act, 1845], you may be required to sell and convey a part only of your property, numbered — on the deposited plans.

We are, Sir,
Your most obedient Servants,

To ———

Note.—If the application be forwarded by post, the words “Parliamentary Notice” are to be printed or written on the cover.

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE,
DESCRIBING THE PROPERTY THEREIN ALLUDED TO.

—	Parish, or other area, as the case may be.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.
Property which may be taken compulsorily.			Part I.			
Property on which an improvement charge may be imposed.			Part II.			

GENERAL ORDERS

FOR THE REGULATION OF PROCEEDINGS UNDER AND IN
PURSUANCE OF THE PRIVATE LEGISLATION PROCEDURE
(SCOTLAND) ACT, 1899 (62 & 63 VICT. c. 47), s. 15.

I. AND II.

The Two Classes of Provisional Orders, and General Orders, compliance with which is to be proved before the Examiners.

1—68. These Orders are identical in substance, so far as is now material, with the Commons Orders 1—68 printed *ante*, pp. 382 *sqq.*, so far as they are applicable to Scotland. The following differences must, however, be noted :—

- (i) Applications for Provisional Orders may be made twice in the year, in April and December. Consequently the dates mentioned in the Standing Orders must be duplicated throughout; to October and November add “February and March;” to the fifteenth, seventeenth, twenty-first and thirty-first of December add the fifteenth, seventeenth, twenty-first and thirtieth of April respectively; and to the twenty-seventh and thirtieth of November add the twenty-eighth and thirty-first of March respectively.
- (ii) Deposits under Orders 25 and 35 are to be made in the offices of the Clerk of the Parliaments and the Secretary for Scotland, and in the Private Bill Office. The deposit under Order 32 is to be made in the office of the Clerk of the Parliaments and in the Private Bill Office. Deposits under Orders 62, 63, 64 and 65 are to be made at the office of the Secretary for Scotland.
- (iii) Order 39 is omitted.
- (iv) Notices under Order 3 are to add that “the subsequent procedure will be by way of Provisional Order, unless it is otherwise decided in terms of the Private Legislation Procedure (Scotland) Act, 1899, in which case the procedure may be by way of private bill, and the notice will, subject to the Standing Orders of Parliament, apply to such bill.”

(v) Add the following Orders :—

Time and
method of
application
for a
Provisional
Order.

26. Applications for a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1899, must be made to the Secretary for Scotland by petition praying him to issue a Provisional Order in accordance with the terms of a draft order submitted to him along with the petition or with such modifications as shall be necessary. Such petition and draft order must be printed and must in any year be lodged by depositing twenty copies thereof (one of which shall be signed by the promoters or their agent) in the manner and subject to the conditions prescribed by General Order 23 at the office of the Secretary for Scotland, Whitehall, on one of the two following dates (hereinafter called the specified dates), that is to say,—

the seventeenth day of April, or
the seventeenth day of December ;

and the times and periods prescribed in these Orders for advertisements, notices, and other proceedings shall be calculated with reference to one or other of the specified dates. A petition and draft order lodged within three days prior to one of the specified dates shall be deemed to have been lodged on such date ; but after either of the said dates it shall not be competent to lodge a petition for a Provisional Order until the specified date next following. If a specified date falls on a Sunday, Good Friday, or public holiday, the next day which is not a Sunday or public holiday shall be deemed to be the specified date.

The petition for a Provisional Order shall be headed by a short title descriptive of the undertaking or Provisional Order, corresponding with that at the head of the advertisement required by General Order 3.

Deposit by
personal
delivery or
by post.

23. Any deposit required by General Orders may be made either by personal delivery or, at the option of the promoters, by registered letter or registered parcel post, and in case of deposit by post the production of a certificate of the posting of such letter or parcel shall be sufficient evidence of the due delivery of such letter or parcel, if it shall appear that the same was properly and sufficiently directed, and in the case of a letter that the same was not returned by the Post Office as undelivered, or in the case of a parcel that it bore on the cover the name and address of the sender and that notification of non-delivery was not made by the Post Office to the sender.

Deposit not
to be made on
Sunday, &c.

No deposit required by General Orders shall be deemed valid if made on Sunday, Christmas Day, Good Friday, or

Easter Monday, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day, except in the case of delivery of letters or parcels by post.

If the date of deposit falls on any of the days aforesaid, the deposit shall, except where otherwise provided, be made on or before the day preceding such date.

III.

Proceedings of, and in relation to, the Examiners.

70. Any parties shall be entitled to appear and be heard, by themselves, their agents, and witnesses, upon a memorial addressed to the Examiners, complaining of a non-compliance with the General Orders, provided the matter complained of be specifically stated in such memorial, and the party (if any) who may be specially affected by the non-compliance with the General Orders have signed such memorial and shall not have withdrawn his signature thereto, and such memorial have been duly deposited in the office of the Examiners at Westminster not later than three weeks after the petition for the Provisional Order has been lodged when it relates to General Orders 3 to 59, and not later than three days before the day appointed by the Examiner for the examination of the proposed Provisional Order with regard to further General Orders when it relates to such Orders.

Memorial
complaining
of non-
compliance.

71. In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership, shall by himself, or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of General Orders 62 to 66, such proprietor, shareholder, or member shall be permitted to be heard by the Examiner, on the compliance with such General Order, by himself, his agents and witnesses, on a memorial addressed to the Examiner, such memorial having been duly deposited in the office of the Examiners at Westminster not later than seven days after the day on which the meeting was held.

Proprietors
dissenting at
meeting may
memorialise
and be heard.

A copy of any memorial addressed to the Examiners shall at the time when such memorial is deposited be sent by the memorialists to the promoters or their agent.

74. All modified draft Provisional Orders as printed and deposited in terms of sects. 7 and 8 of the principal Act shall be referred by the Secretary for Scotland to the Examiners, and the Examiner shall report to the Chairmen and to the Secretary for Scotland whether the General Orders have or have not been complied with, and when they have not been complied with he shall also report to the Chairmen the facts upon which his decision is founded, and any special circumstances connected with the case, and in the case of any modified draft Provisional Order, the compliance with such General Orders only as shall not have been previously inquired into shall be proved.

Modified
orders to be
referred to
Examiners.

If the Examiner finds in terms of this or the immediately preceding Order that the General Orders have not been complied with, the petitioners for the Provisional Order may, within seven days after such finding has been reported to the Chairmen, apply by memorial to the Chairmen to dispense with any General Order which is reported not to have been complied with, and a copy of any such memorial shall at the time when such memorial is presented be sent by the petitioners to the party or parties, if any, upon whose complaint the Examiner reported such General Order not to have been complied with.

See *Rothsay Tramways (Extension) Draft Provisional Order* (1902), 39 S. L. R. 369.

IV.

Proceedings of, and in relation to, Commissioners appointed under the principal Act, and other proceedings and requirements in regard to Provisional Orders.

Time and mode of presenting petitions relating to Provisional Orders.

77. Every petition in favour of or against a proposed Provisional Order shall be addressed to the Secretary for Scotland, and twelve printed copies thereof shall be deposited at the Office of the Secretary for Scotland, Whitehall, one of which shall be signed by or on behalf of the petitioner or petitioners, and there shall be endorsed thereon the name or short title of such Provisional Order and a statement that such petition is in favour of or against such Provisional Order, or otherwise, as the case may be. Copies of every petition against a Provisional Order shall at the time when such petition is presented be sent by the petitioners or their agent to the promoters of the Provisional Order or their agent, and in the event of the Secretary for Scotland refusing in terms of sub-section two of section two of the principal Act to issue the proposed Provisional Order so far as the same is objected to by the Chairmen or Chairman, such promoters or their agent shall within fourteen days after the Secretary for Scotland intimates such refusal to them inform such petitioners or their agent by notice, either delivered personally or forwarded by registered letter, whether they intend to proceed by way of private bill applying for similar powers

Petitioners against Provisional Order not to be heard unless petition presented not later than four weeks after application lodged.

79. Subject to the provisions of sub-section two of section six of the principal Act, no petitioners against any Provisional Order shall be heard before Commissioners, unless their petition praying to be heard shall have been prepared and signed in strict conformity with General Orders, and shall have been presented to the Secretary for Scotland by having been deposited in the Office of the Secretary for Scotland, Whitehall, in the manner and subject to the conditions prescribed in General Order 23 not later than four weeks after the petition for the Provisional Order has been lodged, or in

the case of a dissentient petitioner within the meaning of General Order 77, either not later than four weeks as aforesaid or not later than seven clear days after the day on which the meeting at which he dissented was held, whichever date is later, except where the petitioners shall complain of any matter which may have arisen during the progress of the Provisional Order before the said Commissioners or of the amendments as proposed in the filled-up Provisional Order. The Secretary for Scotland shall cause a list of petitions duly presented to him in terms of this Order to be communicated to Commissioners at their first sitting, with a copy of each petition mentioned in the list.

Dispensed with under sect. 6 (2) of the Act in *Arizona Copper Co., Ltd.* (1901), 38 S. L. R. 862.

[The remaining General Orders, which correspond with the Standing Orders printed *ante*, are shown by the following table. They are identical in substance with the substitution of Provisional Order for Bill, Commissioners for Committee, and General Orders for Standing Orders:—

General Orders.	Standing Orders.		General Orders.	Standing Orders.	
	H. C.	H. L.		H. C.	H. L.
90	143	..	110	158A	..
101	145A	..	121	..	124
102	153	..	126	168B	133c
104	155	113	127	168c	133D
107	..	115, 116, 118	129	..	131
108	..	117	130	170A	133
109	..	118	131	171	..

Add the following orders, which do not correspond to any of the Standing Orders of Parliament, and are here material:—]

Applications of Orders and Statutes.

142. Where these orders give any instructions to Commissioners in respect of their dealings with a Provisional Order, the Secretary for Scotland shall in the case of a Provisional Order which is not referred to Commissioners have regard to such instructions before making and issuing the same. Secretary for Scotland to have regard to certain orders.

143. In every case where, if a proposed Provisional Order were a Private Bill, any general Act of Parliament or clauses thereof would be incorporated therewith according to law or to the ordinary General Acts or clauses thereof to be incorporated.

practice of Parliament, such Act or clauses shall be incorporated with the Provisional Order, subject to such exceptions and variations as may be mentioned in the Provisional Order.

Application
of Parlia-
mentary
Deposits
Act, 1837.

144. The provisions of the Parliamentary Documents Deposit Act, 1837, shall apply in respect of maps, plans, sections, and other documents by these Orders required to be deposited, and shall be binding on all persons with whom the same are directed to be deposited, and may be enforced in all respects as if such deposits were required by Standing Orders of either of the Houses of Parliament.

Application
of Parlia-
mentary
Deposits
Act, 1846.

145. The provisions of the Parliamentary Deposits Act, 1846, shall apply in respect of any sums of money by these Orders required to be deposited by the subscribers to any work or undertaking as if such deposits were required by Standing Orders of either House of Parliament. Provided that in respect of such sums of money the powers of a clerk of the Office of the Clerk of the Parliaments or the Private Bill Office of the House of Commons under the said Act shall, so long as the procedure for obtaining sanction to the work or undertaking aforesaid is by way of draft Provisional Order, be vested in and may be exercised by an Under Secretary or Assistant Under Secretary for Scotland; and provided further that in the said Act of 1846 the expression "bill" shall be deemed to include a Provisional Order or draft Provisional Order under the principal Act, and references to the rejection or withdrawal of a petition or bill by some proceeding in either House of Parliament shall be deemed to include reference to the refusal or withdrawal of a Provisional Order or a draft Provisional Order under the principal Act; and in case of such refusal or withdrawal the Court shall not make an order in terms of the said Act of 1846, unless upon the production of the certificate of the Secretary for Scotland that such Provisional Order or draft Provisional Order was refused or withdrawn, which certificate the Secretary for Scotland shall grant subject to the like incidents and conditions as are provided in the said Act of 1846 with respect to a certificate signed by the Chairman of Committees of the House of Lords or the Speaker of the House of Commons.

PRECEDENT OF A TRAMWAYS ORDERS CONFIRMATION ACT.

CHAPTER .

An Act to confirm certain Provisional Orders made by
the Board of Trade under the Tramways Act,
1870, relating to Tramways.

WHEREAS under the authority of the Tramways Act, 1870, the Board of Trade have made the several Provisional Orders set out in the schedule to this Act annexed :

And whereas a Provisional Order made by the Board of Trade under the authority of the said Act is not of any validity or force whatever until the confirmation thereof by Act of Parliament :

And whereas it is expedient that the several Provisional Orders made by the Board of Trade under the authority of the said Act, and set out in the schedule to this Act annexed, be confirmed by Act of Parliament :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Tramways Orders Confirmation (No.) Act, 19 . Short title.

2. The several orders as amended and set out in the schedule to this Act annexed shall be, and the same are hereby confirmed and all the provisions thereof in manner and form as they are set out in the said schedule shall, from and after the passing of this Act, have full force and validity, and the dates of the same respectively shall be the date of the passing of this Act. Confirmation of Orders in Schedule.

3. [As in the Model Order, *post*, p. 554.]

Protection of houses of labouring class.

SCHEDULE.

[NOTE.—The model form of Order prepared by the Board of Trade for departmental use is now to some extent obsolete, and the following form has therefore been prepared from recent Orders. The promoters have been treated as being a corporation, but the appropriate alterations which are necessary where other bodies or persons are promoters have been duly noted. This Model Order may be supplemented by clauses for the Model Order for a light railway of Class B, *post*, p. 586. Orders made under Private Legislation Procedure (Scotland) Act, 1899, do not follow this form, but resemble special Acts or Orders for Light Railways of Class B.]

———— Corporation.

Order authorising the *Mayor, Aldermen and Burgesses of the Borough of* ——— to construct Tramways in their *Borough.*

Preliminary.

Short title. 1. This Order may be cited as the *Corporation Tramways Order, 1902.*

Incorporation of Acts. 2. The provisions of the Lands Clauses Acts (except with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by the promoters of the undertaking (*a*)), and of the Tramways Act, 1870 (*b*), are hereby incorporated with this Order except where the same are inconsistent with or expressly varied by this Order (*c*).

Interpretation. 3. The several words, terms and expressions to which by the Acts in whole or in part incorporated with this Order meanings are assigned have in this Order the same respective meanings:

Provided that in this Order—

The expression “the borough” means the borough of _____ *in the county of* _____.

The expression “the corporation” means the mayor, aldermen and burgesses of the borough acting by the council:

The expressions “the tramways” and “the undertaking” mean respectively the tramways and works, and the undertaking by this Order authorised (*d*):

The expression “mechanical power” includes steam, electrical and every other motive power not being animal power, and the word “engine” includes motor.

Promoters.

Promoters. 4. The *corporation* shall be the promoters for the purposes of this Order, and are in this Order referred to as “the promoters.”

(*a*) See sect. 15 of the Act and notes thereto.

(*b*) See sect. 22 of the Act.

(*c*) See note (*p*) to sect. 15 of the Act.

(*d*) See note (*o*) to sect. 43 of the Act.

Lands.

[See sect. 15 of the Act and notes thereto.]

5. The promoters may—

- (a) subject to the sanction of the Local Government Board, **Lands.**
and under such conditions as they may prescribe from time to time, appropriate and use for any of the purposes of this Order, but subject to the provisions (if any) under which such lands were respectively acquired, any lands not dedicated to public use from time to time vested in them [being part of their corporate estates (*e*)]:
- (b) by agreement from time to time purchase and acquire for the purposes of the undertaking such lands as they may require, and may from time to time sell, let or dispose of any such lands which may not be necessary for such purposes. Provided that all sums received by the promoters from the sale of such lands, or from fines or premiums on leases of the same, shall be applied solely in repayment of outstanding loans, and that such moneys shall not be applied to the payment of instalments or to payments into the sinking fund, except to such extent and upon such terms as may be approved by the Local Government Board:

Provided that they shall not at any time hold for such purposes more than *five* acres of land. Provided also that nothing in this Order shall exonerate the promoters from any indictment, action or other proceeding for nuisance in the event of any nuisance being caused or permitted by them upon lands appropriated or taken under the powers of this section (*f*).

[Where the promoters are not a local authority the following section must be substituted:—

5A. The promoters may by agreement from time to time purchase, **Lands by**
take on lease and acquire, for the purposes of the undertaking, **agreement.**
such lands as they may require, and may from time to time sell, let or otherwise dispose of any such lands not required for such purposes. Provided that they shall not at any time hold for such purposes or for the purposes of any adjoining tramways they may acquire more than *five* acres of land. Provided always, that nothing in this Order shall exonerate the promoters from any indictment, action or other proceeding for nuisance, in the event of any nuisance being caused or permitted by them upon any land acquired by them under this section (*f*).]

(*e*) The words in brackets will be omitted where the promoters are a local authority other than the corporation of a borough.

(*f*) See *ante*, pp. 226—7, 232.

*Construction of Tramways.*Construction
of tramways.

6. The promoters may, subject to the provisions of this Order—
- (a) construct and maintain in accordance with the plans and sections deposited at the office of the Board of Trade for the purposes of this Order (which plans and sections are in this Order referred to respectively as “the deposited plans” and “the deposited sections”) the tramways hereinafter described, with all proper rails, points, plates, sleepers, junctions, turntables, turnouts, weigh-bridges, crossings, passing-places, works and conveniences connected therewith and for the purposes thereof, and may work and use the same (g);
 - (b) erect, construct and provide on any lands *taken or appropriated* (h) under the powers of this Order offices, stables, sheds, carriage, engine, boiler and dynamo houses, and other buildings for the purposes of the undertaking:

Provided that nothing in this Order, or in any Act wholly or in part incorporated therewith, shall extend to or authorise any interference with any works of any undertakers under the Electric Lighting Acts, 1882 and 1888, to which the provisions of sect. 15 (i) of the Act of 1882 apply, except in accordance with and subject to the provisions of that section (k).

The tramways will be wholly situated within *the borough*, and are as follows:—

Tramway No. 1 (furlongs chains in length, whereof
furlong chains is single and furlongs chains is
double) commencing at , passing into and along ,
and terminating in the last-named road at .

Tramway No. 1 will be laid as a double line except at the following places, where it will be laid as a single line:—

In Road, from to .

[Where the Order is for the reconstruction of an existing tramway, substitute:—

Reconstruction
of existing tramways.

6A. Subject to the provisions of this Order, the promoters may, within the period of three years from the date of this Order, or such extended period as the Board of Trade may allow, relay the plates and rails of the tramways, or otherwise alter the present construction thereof, for the purpose of adapting the same for working by mechanical power, as by this Order authorised.]

(g) A sub-section in a special Act similar to this and another similar to sect. 15, *post*, were discussed in *Wilkinson and Marshall v. Newcastle-upon-Tyne Corporation* (1902), 18 T. L. R. 332. It was there pointed out that a connecting line between two routes is not a “junction” within the meaning of this section.

(h) Where the promoters are not a local authority, substitute “acquired.”

(i) The section referred to provides for the removal on terms by undertakers of the apparatus of other persons and authorities, and *vice versa*.

(k) After this section add any conditions precedent to the construction of the tramways, such as road widenings (see Model Order, s. 11, *post*, p. 588).

[Where the promoters already have a tramway undertaking, one of the following sections may be added :—

6b. Subject to the provisions of this Order, the tramways shall for all purposes form part of the *corporation* tramways undertaking (*l*), and the promoters and their lessees and their licensees may, in respect of the tramways, exercise and enjoy all and the like powers, rights, privileges and authorities which they now may or are empowered to exercise and enjoy, and shall be subject and liable to the like penalties, conditions, restrictions and stipulations as they are subject and liable to with respect to the *corporation* tramways undertaking, or any part thereof, and may demand, take and recover in respect of the tramways or any part or parts thereof the like tolls, rates and charges for the use thereof, and for the conveyance thereon of traffic of all kinds, and for the use of carriages placed and run thereon by them, as they are authorised to demand and take in respect of the tramways authorised by the Tramways Order [Act], 19 .

Or, The provisions of the Order [Act] shall, so far as they are applicable in that behalf and are not inconsistent with the provisions of this Order, extend and apply *mutatis mutandis* to and in relation to the tramways authorised by this Order as if such tramways had formed part of the tramways authorised by the Order [Act].

[Here insert protective clauses, if any; specimens will be found in the Model Orders, *post*, pp. 561 *seq.*, 602 *seq.*]

7. The tramways shall be constructed on a gauge of *four feet eight and a half inches*, or such other gauge as may from time to time be determined by the Board of Trade on the application of the promoters. Provided always, that in the event of the tramways being constructed on a less gauge than *four feet eight and a half inches* so much of section 34 of the Tramways Act, 1870, as limits the extent of the carriages used on any tramways beyond the outer edge of the wheels of such carriages shall not apply to carriages used on the tramways, but in that case no engine or carriage used on the tramways shall exceed six feet six inches in width or such other width as may from time to time be prescribed by the Board of Trade (*m*).

Tramways to form part of tramway undertaking for all purposes.

Application of order of

Gauge and width of carriages.

Provisions as to construction of tramways.

8. In addition to the requirements of sect. 26 of the Tramways Act, 1870, the promoters shall [at the same time as they give notice to the road authority of their intention to open or break up any road for the purpose of constructing, laying down, maintaining or

(*l*) As to the effect of this, see note (*o*) to sect. 43 of the Act.

(*m*) As to gauge, see notes (*i*) to sect. 25 and (*m*) to sect. 34 of the Act, and note (*z*) to sect. 11 of Light Railways Act, 1896. The width of carriage is regulated by a scale prescribed by the Board of Trade, which is set out in note (*i*) to sect. 25 of the Act.

renewing any of the tramways] lay before the Board of Trade [and the road authority] a plan showing the proposed mode of constructing, laying down, maintaining or renewing such tramways, and a statement of the materials intended to be used therein, and the promoters shall not commence the construction, laying down, maintenance or renewal of any of the tramways, or part of any of the tramways respectively, except for the purpose of necessary repairs until such plan and statement have been approved by the Board of Trade [and the road authority], and after such approval the works shall be executed in accordance in all respects with such plan and statement [and in places where the promoters are not the sole road authority under the superintendence and to the reasonable satisfaction of the surveyor of the road authority as provided by the said section] (*n*).

Rails of tramways.

9. The rails of the tramways shall be such as the Board of Trade may approve (*o*).

Penalty for not maintaining rails and road in good condition.

10.—(1) The promoters shall at all times maintain and keep in good condition and repair and so as not to be a danger or annoyance to the ordinary traffic the rails of the tramways and the substructure upon which the same rest, and if the promoters at any time fail to comply with this provision or with the provisions of sect. 28 of the Tramways Act, 1870 (*p*), they shall be subject to a penalty not exceeding five pounds for every day on which such non-compliance continues.

(2) In case it is represented in writing to the Board of Trade [by the road authority of any district in which the tramways, or any portion thereof, are or is situate, or] (*q*) by twenty inhabitant ratepayers of the [such] district, that the promoters have made default in complying with the provisions in this section contained or with any of the requirements of sect. 28 of the Tramways Act, 1870 (*p*), the Board of Trade may, if they think fit, direct an inspection by an officer to be appointed by the said Board, and if such officer report that the default mentioned in such representation has been proved to his satisfaction, then and in every such case a copy of such report, certified by a secretary or assistant secretary of the Board of Trade, may be adduced as evidence of such default, and

(*n*) The words in brackets must be added where the promoters are not the sole road authority. Where the promoters are not a local authority the same words must be added, except the words "where the promoters are not the sole road authority" in the last sentence.

See, generally, as to these provisions sect. 26 of the Act and the notes thereto.

(*o*) Sometimes it is provided that the Board of Trade may require the promoters to adopt improvements which experience has suggested on the application of the local or road authority. (See Tramways Orders Confirmation (No. 2) (West Riding, Knottingley Extension) Act, 1902 (2 Edw. 7, c. cciii.).)

As to rails, see note (*k*) to sect. 25 of the Act and the Board of Trade requirements, *ante*, pp. 349, 341.

(*p*) See, generally, the notes to sect. 28 of the Act.

(*q*) Omit where the promoters are the sole road authority.

of the liability of the promoters to such penalty or penalties in respect thereof as is or are by this section imposed.

Where the promoters are not the sanitary authority add the following :—

11. Every sanitary authority shall at all times have free access to and communication with all their sewers and drains, and power to lay lateral and private drains to communicate therewith, without the consent or concurrence of the promoters, and the provisions contained in sects. 32 and 33 of the Tramways Act, 1870, shall be applicable in the case of any sewer or private drain of or under the control of the sanitary authority as if the same were a pipe for the supply of gas or water (*r*).

Sanitary authority to have access to sewers.

12. If [the promoters or] (*s*) any [other] (*s*) road authority here- after alter the level of any road along or across which any part of the tramways is laid or authorised to be laid, the promoters may and shall from time to time alter or (as the case may be) lay their rails so that the uppermost surface thereof shall be on a level with the surface of the road as altered.

Tramways to be kept on level of surface of road.

13. The promoters may, with the consent of the Board of Trade, [and the road authority] (*t*) lay down double lines in lieu of single or interlacing lines, or single lines in lieu of double or interlacing lines, or interlacing lines in lieu of double or single lines on any of the tramways [and if at any time after the construction of the tramways the road in which the same, or any part thereof, is laid shall be altered in level or widened, the promoters may, with the like consents, take up and remove such tramways or part thereof and reconstruct the same in such position as they may think fit], or [and may, with the like consents, subject in places where the promoters may not be the road authority to the approval of that authority] (*t*) alter the position in the road of any of the tramways or any part thereof respectively. Provided that the uppermost surface thereof shall be on a level with the surface of the road :

Alteration of tramways.

Provided further that in exercise of the powers of this section no rail shall be so laid that a less space than nine feet six inches shall intervene between it and the outside of the footpath on either side of the road if one third of the owners or one third of the occupiers of the premises abutting on the place where such less space shall intervene shall by writing under their hands, addressed and delivered to the promoters within three weeks after receiving from the promoters notice of their intention (which notice the promoters shall

(*r*) See the notes to the sections named.

(*s*) Omit the words in brackets where the promoters are not the local or road authority. If the promoters fail in their duty under this section, apparently a mandamus may go against them. (*Ex parte Acton, Middlesex, Local Board*, 1888, "Times" Newspaper, Nov. 6.)

(*t*) Omit these words where the promoters are the sole road authority.

give one month before commencing any alterations under this section), express their objection thereto (*u*).

[Add the following section where required :—

Power to deviate.

13A. In constructing and maintaining the tramways the promoters may, with the previous approval of the Board of Trade, deviate laterally from the lines shown on the deposited plans to any extent not exceeding one foot, but no such deviation shall be made so that a less space than nine feet six inches shall intervene between the outer rail of the tramway and the outer edge of the footway on either side of the road, if one third of the owners or one third of the occupiers of the premises abutting on the place where such less space shall intervene shall, by writing under their hands addressed and delivered to the promoters within three weeks after receiving from the promoters notice of their intention, express their objection thereto (*u*).]

Cross-over roads to be constructed in certain cases.

14. Where in any road in which a double line of tramway is laid there shall be less width between the outside of the footpath on either side of the road and the nearest rail of the tramway than nine feet six inches (*u*), the promoters shall if and where required by the Board of Trade construct a cross-over road or roads connecting the one tramway with the other, and by the means of such cross-over road or roads the traffic shall, when necessary, be diverted from one tramway to the other.

Additional cross-over roads, &c. may be made where necessary.

15. The promoters may, subject to the provisions of this Order [with the consent of the local and road authorities] (*x*), from time to time make, maintain, alter and remove all such cross-over roads, passing-places, sidings, junctions and other works in addition to those particularly specified in and authorised by this Order as they find necessary for the efficient working of the tramways or for forming junctions with other tramways, or for providing access to any warehouses, stables or carriage-houses or works of the promoters (*y*) [but in places where the promoters may not be the road authority the same shall only be made subject to the approval of the road authority] (*z*). Provided that in the construction of any such works no rail shall be so laid that a less space than nine feet six inches shall intervene between it and the outside of the footpath on either side of the road if one third of the owners or one third of the occupiers of the premises abutting on the place where such less space shall intervene shall, by writing under their hands addressed and delivered to the promoters within three weeks after receiving

(*u*) See sect. 9 of the Act and the notes thereto.

(*x*) Insert where the promoters are not a local or road authority.

(*y*) See *ante*, p. 426, note (*g*).

(*z*) Insert where the promoters are a road authority, but not the sole road authority.

from the promoters notice of their intention (which notice the promoters shall give one month before commencing any works under this section), express their objection thereto (zz).

16. Where by reason of the execution of any work affecting the surface or soil of any road along which any of the tramways are laid it is in the opinion of the [road authority] (a) necessary or expedient temporarily to remove or discontinue the use of such tramway or any part thereof the promoters may [subject to such conditions and in accordance in all respects with such regulations as the road authority may from time to time make] (b) construct in the same or any adjacent road and [with the like consent, subject to the like conditions and in accordance with the like regulations] (b) maintain so long as occasion may require a temporary tramway or temporary tramways in lieu of the tramway or part of the tramway so removed or discontinued [subject, in places in which the promoters may not be the sole road authority, to the approval of the road authority and to such regulations as that authority may make] (c).

Temporary tramways may be made when necessary.

17. Any paving, metalling or material excavated by the promoters in the construction of the tramways from any road under the jurisdiction or control of any road authority [other than the promoters] (d) may be applied by the promoters so far as may be necessary in or towards the re-instating of the road and the maintenance for six months after completion of any of the tramways within the district of such road authority of so much of the roadway on either side of such tramways as the promoters are by this Order required to maintain, and the promoters shall, if so required, deliver the surplus paving, metalling or material not used or required to be retained for the purposes aforesaid to the surveyor of such road authority or to such person as he may appoint to receive the same at such place as he may direct. Provided that if within seven days after the setting aside of the surplus arising from the excavation of any such paving, metalling or material, and notice duly given, such surplus is not removed by such surveyor or by some other person named by him for that purpose, such surplus paving, metalling or material shall absolutely vest in and belong to the promoters, and may be dealt with, removed and disposed of by them in such

Application of road materials excavated in construction of works.

(zz) See sect. 9 of the Act and the notes thereto.

(a) Substitute "promoters" where the promoters are a road authority.

(b) Insert these words where the promoters are not a road authority.

(c) Add these words where the promoters are not the sole road authority.

(d) Insert where the promoters are a road authority, but not the sole road authority. A provision, which, however, is unnecessary, may be added to the effect that the material on roads which are within the jurisdiction of the promoters as road authority shall vest in them. Where the promoters are not a road authority, a provision may be inserted limiting the time within which the promoters must remove the material which has vested in them on the failure of the road authority to remove it.

manner as they may think fit. Any difference between the promoters and any road authority or surveyor or other person, with reference to any of the matters aforesaid, shall be settled by a referee to be nominated by the Board of Trade on the application of either party.

Tramways
not to be
opened until
certified by
Board of
Trade.

18. The tramways shall not be opened for public traffic until the same have been inspected and certified to be fit for such traffic by the Board of Trade (*e*).

Motive Power.

Provisions as
to motive
power.

19. The carriages used on the tramways may be moved by animal power or, subject to the following provisions, by mechanical power (that is to say):—

(1.) The mechanical power shall not be used except with the consent of and according to a system approved by the Board of Trade :

(2.) The Board of Trade shall make regulations (in this Order referred to as “the Board of Trade regulations”) for securing to the public all reasonable protection against danger arising from the use under this Order of mechanical power on the tramways and for regulating the use of electrical power (*f*) :

(3.) The promoters or any company or person using any mechanical power on the tramways contrary to the provisions of this Order or of the Board of Trade regulations shall for every such offence be liable to a penalty not exceeding ten pounds, and also in the case of a continuing offence to a further penalty not exceeding five pounds for every day during which such offence is continued after conviction thereof :

(4.) The Board of Trade if they are of opinion—

(a) that the promoters or such company or person have or has made default in complying with the provisions of this Order or of the Board of Trade regulations, whether a penalty in respect of such non-compliance has or has not been recovered ; or

(b) that the use of mechanical power as authorised under this Order is a danger to the passengers or the public ;

may by order either direct the promoters or such company or person to cease to use such mechanical power or permit the same to be continued only subject to such conditions as the Board of Trade may impose, and the promoters or such company or person shall comply with every such

(*e*) See sect. 25 of the Act and note (*m*) thereto, and Rule XXV., *ante*, p. 338.

(*f*) These various regulations are printed *ante*, pp. 352 *sqq*.

order. In every such case the Board of Trade shall make a special report to Parliament (*g*) notifying the making of such order (*h*).

20. For the purpose of working any of the tramways by mechanical power, the promoters [and their lessees] (*i*), subject to the provisions of this Order [(and as to the lessees, subject to the terms of their lease)] (*i*), may—

Mechanical
power works.

(a) construct, provide, maintain and use on any lands [appropriated or] (*k*) acquired under the powers of this Order, stations for generating electrical power, with all necessary or proper machinery, dynamos, engines, buildings, works and conveniences;

(b) [subject to the reasonable approval of the local and road authority and to such reasonable terms and conditions as those authorities may impose, and subject to the approval of the local authority as to the design of works] (*l*), place, construct, erect, lay down, make and maintain on, in, under or over the surface of any street or road, posts, electric mains, wires, apparatus, subways, tunnels, cables, tubes and openings (*m*);

(c) with the consent of the owners and occupiers of any houses or buildings, affix to such houses or buildings or maintain brackets, wires and apparatus.

21. All works to be executed by the promoters [or their lessees] (*i*), in any street or road for working the tramways by mechanical power in pursuance of the powers of this Order, shall be deemed to be works of a tramway subject in all respects (save as by this Order otherwise expressly provided) to the provisions of the Tramways Act, 1870, as in this Order incorporated, as if they had been therein expressly mentioned.

Mechanical
power works
to be subject
to Tramways
Act, 1870.

22. Subject to the provisions of this Order, the Board of Trade may make by-laws with regard to any part of the tramways upon which mechanical power may be used for all or any of the following purposes (that is to say):—

By-laws.

For regulating the use of any bell, whistle, or other warning apparatus fixed to the engine or carriages;

(*g*) Compare Light Railways Act, 1896, s. 11 (*a*).

(*h*) There may be added, where the promoters are not a local authority, “provided that save under exceptional and temporary circumstances animal or steam power shall not be used on the tramways except with the consent of the local authority,” or, where several local authorities are concerned, “with the consent of the majority of the local authorities within whose districts it is proposed to use such power.”

(*i*) Omit these words where the promoters are not a local authority and have no power to lease.

(*k*) Omit these words where the promoters are not a local authority.

(*l*) Insert these words where the promoters are not the local and road authority.

(*m*) See note (*r*) to sect. 7 of Light Railways Act, 1896.

For regulating the emission of smoke or steam from engines used on the tramways;

For providing that engines and carriages shall be brought to a stand at the intersection of cross streets, and at such places and in such cases of horses being frightened, or of impending danger, as the Board of Trade may deem proper for securing safety;

For regulating the entrance to, exit from and accommodation in the carriages used on the tramways, and the protection of passengers from the machinery used for propelling such carriages;

For providing for the due publicity of all by-laws and Board of Trade regulations in force for the time being in relation to the tramways, by exhibition of the same in conspicuous places on the carriages and elsewhere.

Any person offending against or committing a breach of any of the by-laws made by the Board of Trade under the authority of this order, shall be liable to a penalty not exceeding forty shillings (*mm*).

Amendment
of Tramways
Act, 1870, as
to by-laws by
local
authority.

23. The provisions of the Tramways Act, 1870, relating to the making of by-laws by the local authority with respect to the rate of speed to be observed in travelling on the tramways, shall not authorise the local authority to make any by-law sanctioning a higher rate of speed than that authorised by the Board of Trade regulations at which engines are to be driven or propelled on the tramways under the authority of this Order; but the by-laws of the local authority may restrict the rate of speed to a lower rate than that so authorised (*n*).

Special pro-
visions as to
use of electri-
cal power.

24. The following provisions shall apply to the use of electrical power under this Order, unless such power is entirely contained in and carried along with the carriages:—

- (1.) The promoters shall employ either insulated returns or uninsulated metallic returns of low resistance:
- (2.) The promoters shall take all reasonable precautions in constructing, placing and maintaining their electric lines and circuits, and other works of all descriptions, and also in working their undertaking so as not injuriously to affect by fusion or electrolytic action any gas or water pipes, or other metallic pipes, structures or substances, or to interfere with the working of any wire, line or apparatus from time to time used for the purpose of transmitting electrical power, or of telegraphic, telephonic or electric signalling communication, or the currents in such wire, line or apparatus:
- (3.) The electrical power shall be used only in accordance with

(*mm*) Model by-laws and regulations, made under this section, are printed *ante*, pp. 354, 367, 370. See the notes thereto.

(*n*) See *ante*, pp. 195, 375.

the Board of Trade regulations, and in such regulations provision shall be made for preventing fusion or injurious electrolytic action of or on gas or water pipes or other metallic pipes, structures or substances, and for minimising as far as is reasonably practicable injurious interference with the electric wires, lines and apparatus of other parties and the currents therein, whether such lines do or do not use the earth as a return (o):

- (4.) The promoters shall be deemed to take all reasonable precautions against interference with the working of any wire, line or apparatus, if and so long as they adopt and employ at the option of the promoters either such insulated returns or such uninsulated metallic returns of low resistance and such other means of preventing injurious interference with the electric wires, lines and apparatus of other parties and the currents therein as may be prescribed by the Board of Trade regulations, and in prescribing such means the Board shall have regard to the expenses involved and to the effect thereof upon the commercial prospects of the undertaking (o):
- (5.) At the expiration of two years from the passing of the Act confirming this Order the provisions of this section shall not operate to give any right of action in respect of injurious interference with any electric wire, line or apparatus, or the currents therein, unless in the construction, erection, maintaining and working of such wire, line and apparatus all reasonable precautions, including the use of an insulated return, have been taken to prevent injurious interference therewith and with the currents therein by or from other electric currents:
- (6.) If any difference arises between the promoters and any other party with respect to anything hereinbefore in this section contained, such difference shall, unless the parties otherwise agree, be determined by the Board of Trade, or at the option of the Board by an arbitrator to be appointed by the Board, and the costs of such determination shall be in the discretion of the Board or of the arbitrator as the case may be:
- [(6A.) When any department of His Majesty's Government represents to the Board of Trade that the use of electrical power under this Order injuriously affects, or is likely to injuriously affect, any instruments or apparatus, whether electrical or not, used in any observatory or laboratory belonging to or under the control of that department, the Board of Trade, after such inspection or inquiry as they may think proper, may by their special regulations require

(o) See the authorities cited *ante*, p. 235.

the promoters to use such reasonable and proper precautions, including insulated returns, as the Board of Trade may deem necessary for the prevention of such injurious affection. For the purposes of this sub-section any inspector of the Board of Trade may, during his inspection of the promoters' works and apparatus, be accompanied by any person or persons appointed in that behalf by the Government department concerned, and the promoters shall give all due facilities for the inspection. Provided that in the case of any observatory or laboratory established after the commencement of this Order, or of any instruments or apparatus hereafter used in any existing observatory or laboratory which may be of greater delicacy than those used therein at the commencement of this Order, the Board of Trade shall consider to what extent, if any, it is expedient in the interests of the public that the powers of this sub-section should be exercised, regard being had to the site of the observatory or laboratory or the purposes of the instruments or apparatus as the case may be (*p*):]

- (7.) The expression "the promoters" in this section shall include [their lessees and (*q*)] any person owning, working or running carriages over any tramways of the promoters.

For protection
of Postmaster-
General.

25.—(A) Notwithstanding anything in this Order or in the Order of 1901 contained, if any of the works by this Order authorised involves, or is likely to involve, any alteration of any telegraphic line belonging to or used by his Majesty's Postmaster-General, the provisions of section 7 of the Telegraph Act, 1878 (*r*), shall apply (instead of the provisions of section 30 of the Tramways Act, 1870) to any such alteration.

(B) In the event of the tramways or any part thereof being worked by electricity, the following provisions shall have effect:—

- (1.) The promoters shall construct their electric lines and other works of all descriptions, and shall work the undertaking in all respects with due regard to the telegraphic lines from time to time used or intended to be used by the Postmaster-General and the currents in such telegraphic lines, and shall use every reasonable means in the construction of their electric lines and other works of all descriptions and the working of their undertaking to prevent injurious affection, whether by induction or otherwise, to such telegraphic lines or the currents therein. Any difference which arises between the Postmaster-

(*p*) This clause will be added where the Board of Trade think it necessary.

(*q*) Omit where the promoters are not a local authority and have no power of leasing.

(*r*) 41 & 42 Vict. c. 76, s. 7, provides for the giving of notice to the Postmaster-General, and enables the Postmaster-General, if he thinks fit, to carry out the alterations himself.

General and the promoters as to compliance with this sub-section shall be determined by arbitration :

- (2.) If any telegraphic line of the Postmaster-General is injuriously affected by the construction by the promoters of their electric lines and works, or by the working of their undertaking, the promoters shall pay the expense of all such alterations in the telegraphic lines of the Postmaster-General as may be necessary to remedy such injurious affection :
- (3.) Before any electric line is laid down, or any act or work for working the tramways by electricity is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs), the promoters or their agents, not more than twenty-eight nor less than fourteen days before commencing the work, shall give written notice to the Postmaster-General specifying the course of the line and the nature of the work, including the gauge of any wire, and the promoters and their agents shall conform with such reasonable requirements (either general or special) as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphic line of the Postmaster-General from being injuriously affected by the said act or work. Any difference which arises between the Postmaster-General and the promoters or their agents with respect to any requirements so made shall be determined by arbitration :
- (4.) If any telegraphic line of the Postmaster-General situate within one mile of any portion of the works of the promoters is injuriously affected, and he is of opinion that such injurious affection is or may be due to the construction of the works of the promoters or to the working of their undertaking, the engineer-in-chief of the Post Office, or any person appointed in writing by him, may at all times when electrical energy is being generated by the promoters enter any of the works of the promoters for the purpose of inspecting the plant of the promoters and the working of the same, and the promoters shall, in the presence of such engineer-in-chief or such appointed person as aforesaid, make any electrical tests required by the Postmaster-General, and shall produce for the inspection of the Postmaster-General the records kept by the promoters pursuant to the Board of Trade regulations(s) :
- (5.) In the event of any contravention of or wilful non-compliance with this section by the promoters or their agents, the promoters shall be liable to a fine not exceeding 10*l.* for

every day during which such contravention or non-compliance continues, or if the telegraphic communication is wilfully interrupted not exceeding 50% for every day on which such interruption continues :

- (6.) Provided that nothing in this section shall subject the promoters or their agents to a fine under this section if they satisfy the Court having cognizance of the case that the immediate doing of any act or the execution of any work in respect of which the penalty is claimed was required to avoid an accident, or otherwise was a work of emergency, and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the act or work was done a notice of the execution thereof stating the reason for doing or executing the same without previous notice :
- (7.) For the purposes of this section a telegraph line of the Postmaster-General shall be deemed to be injuriously affected by an act or work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such act or work, or by any use made of such work :
- (8.) For the purposes of this section and subject as therein provided, sections 2, 10, 11 and 12 of the Telegraph Act, 1878, shall be deemed to be incorporated with this order (*t*) :
- (9.) The expression " electric line " has the same meaning in this section as in the Electric Lighting Act, 1882 (*u*) :
- (10.) Any question or difference arising under this section which is directed to be determined by arbitration shall be determined by an arbitrator appointed by the Board of Trade, on the application of either party, whose decision shall be final, and sections 30 to 32, both inclusive, of the Regulation of Railways Act, 1868 (*x*), shall apply in like manner as if the promoters or their agents were a company within the meaning of that Act :
- (11.) Nothing in this section contained shall be held to deprive the Postmaster-General of any existing right to proceed

(*t*) Sect. 2 is a definition section, sects. 10 and 11 provide for the prosecution of offences and the recovery of money by the Postmaster-General, and sect. 12 deals with the authentication, service, &c. of documents.

(*u*) 45 & 46 Vict. c. 56. The definition is (s. 32) :—" A wire or wires, conductor or other means used for the purpose of conveying, transmitting or distributing electricity, with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity or electric currents."

(*x*) 31 & 32 Vict. c. 119. Sects. 30—32 provide for the appointment and remuneration of the arbitrator, and apply Railway Companies Arbitration Act, 1859 (22 & 23 Vict. c. 59), ss. 18—29, which deal with the conduct of arbitrations.

against the promoters by indictment, action or otherwise in relation to any of the matters aforesaid (y) :

- (12.) In this section the expression "the promoters" includes [their lessees and] (z) any person owning, working or running carriages over any tramways of the promoters or any part thereof.

Traffic upon Tramways.

[See generally sect. 10 of the Act and the notes thereto.]

26. The tramways may be used for the purpose of conveying passengers, animals, goods, minerals and parcels. Traffic upon tramways.

27. The [promoters' lessees] (a) shall not be bound to carry, unless they think fit, any animals, goods, minerals or parcels, other than passengers' luggage not exceeding twenty-eight pounds in weight. [Promoters' lessees] (a) not bound to carry animals, goods, &c.

28. In case the [promoters' lessees] (a) carry animals, goods, minerals or parcels, they may, and when required by the [corporation] (c) shall, carry the same in separate carriages, or separate parts of carriages, set apart for that purpose: Provided that this provision shall not apply to the carriage of passengers' luggage not exceeding twenty-eight pounds in weight. Provisions as to carriage of animals, goods, &c.

[Where animals and goods are not to be carried, substitute for the last three sections :—

28A. The [promoters' lessees] (a) shall not carry on the tramways any goods, animals or other things, other than passengers and passengers' luggage, not exceeding twenty-eight pounds in weight, and small parcels.] [Promoters' lessees] (a) not to carry animals or goods.

[28B.—(1) The promoters shall run over the entire system of tramways by this Order authorised a sufficient and regular daily service of cars. Promoters to run regular daily service of cars.

(2) Any matter in difference between the local authorities or any of them and the promoters as to the sufficiency of the service upon the system or any part of the system shall from time to time be referred to the arbitration of a person nominated by the Board of Trade, and the provisions of this Order as to arbitration shall apply accordingly.

- (3) The promoters shall be liable to a penalty of five pounds for

(y) See the authorities cited *ante*, p. 209.

(z) Omit where the promoters are not a local authority and have no power to lease.

(a) Where the promoters are not a local authority, or are a local authority with power to work the tramways, substitute "promoters."

(c) Where the promoters are not a local authority substitute "local authority."

every day during which they fail to give effect to any decision of a referee under this section, and such penalty may be recovered as by this Order provided by any local authority interested (*e*).]

Local authorities and road authorities may use tramways for certain purposes. 28c. [A section may be inserted here, if desired, similar to sect. 53 of the Model Order, *post*, p. 611, giving local and road authorities power to use the tramways for sanitary purposes, and to make the necessary junctions. If the promoters are a local authority, the junctions alone and not the user need to be provided for.]

Rates.

[See, generally, sects. 10 and 45 of the Act and the notes thereto. Throughout this portion of the Order "promoters" must be substituted for "promoters' lessees," where the promoters are not a local authority or are a local authority with power to work the tramways.]

Passengers' fares. 29. The [promoters' lessees] may demand and take for every passenger travelling upon the tramways or any part thereof, including every expense incidental to such conveyance, any rates or charges not exceeding *one penny* per mile (and for this purpose a fraction of a mile beyond an integral number of miles shall be deemed a mile), but in no case shall the promoters' lessees be bound to charge a less sum than *twopence* (*f*).

As to fares on Sundays and holidays. 30. The promoters or any person working or using the tramways shall not take or demand on Sunday or any public or local holiday any higher rates or charges than those levied by them on ordinary week days.

Passengers' luggage. 31. Every passenger travelling upon the tramways may take with him his personal luggage not exceeding twenty-eight pounds in weight without any charge being made for the carriage thereof. Provided that all such personal luggage be carried by hand and at the responsibility of the passenger, and do not occupy any part of a seat nor be of a form or description to annoy or inconvenience other passengers.

Cheap fares for labouring classes. 32.—(1) The [promoters' lessees] at all times after the opening of the tramways for public traffic shall and they are hereby required to run a proper and sufficient service of carriages for artisans, mechanics and daily labourers each way every morning and every evening (Sundays, Christmas Day, Good Friday and public holidays always excepted) at such hours not being later than eight in the morning or earlier than five in the evening respectively as may be most convenient for such workmen going to and returning from their work, at fares not exceeding *one half-penny* for every mile or fraction of that distance. On Saturdays the [promoters' lessees], in lieu of running such carriages after five o'clock in the evening, shall

(*e*) This provision may be usefully inserted where the promoters are not a local authority. Compare Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 3.

(*f*) The amounts in italics are the amounts usually authorised.

run the same at such hours between noon and two o'clock in the afternoon as may be most convenient for the said purposes.

(2) If complaint is made to the Board of Trade that such proper and sufficient service is not provided, the Board, after considering the circumstances of the locality, may by order direct the [promoters' lessees] to provide such service as may appear to the Board to be reasonable.

(3) The [promoters' lessees] shall be liable to a penalty not exceeding five pounds for every day during which they fail to comply with any order under this section (*g*).

33. The [promoters' lessees] may demand and take in respect of any animals, goods, minerals or parcels conveyed by them on the tramways, including every expense incidental to such conveyance, any rates or charges not exceeding the rates and charges specified in the schedule to this Order annexed, subject to the regulations in that behalf therein contained. Rates and charges for animals, goods, &c.

34. The rates and charges by this Order authorised shall be paid to such persons and at such places upon or near to the tramways and in such manner and under such regulations as the [promoters' lessees] may by notice to be annexed to the list of rates and charges appoint (*h*). Payment of rates.

35. If at any time after three years from the opening for public traffic of the tramways or any portion thereof, or after three years from the date of any order made in pursuance of this section in respect of the tramways or any portion thereof, it is represented in writing to the Board of Trade [by the promoters or by their lessees, or by twenty inhabitant ratepayers (*i*) of the borough] (*k*) that under the circumstances then existing all or any of the rates and charges demanded and taken in respect of the traffic on the tramways or on such portion should be revised, the Board of Trade may (if they think fit) direct an inquiry by a referee to be appointed by the said Board in accordance with the provisions of the Tramways Act, 1870, and if such referee reports that it has been proved to his satisfaction that all or any of the rates or charges should be revised, the said Board may make an order in writing altering, modifying, reducing or increasing all or any of the rates and charges to be demanded and taken in respect of the traffic on the tramways, or on such portion of the tramways, in such manner as they think fit, and thenceforth such order shall be observed until the same is revoked or modified by an order of the Board of Trade made in pursuance of this section. Provided always that the rates Periodical revision of rates and charges.

(*g*) Compare Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 3.

(*h*) As to this provision, compare the cases cited *ante*, p. 201.

(*i*) Compare sect. 35 of the Act.

(*k*) Where the promoters are not a local authority substitute "by the local authority of any district in which the tramways or such portion are or is wholly or partially situate, or by twenty inhabitant ratepayers of the district, or by the promoters."

and charges prescribed by any such order shall not exceed in amount the rates and charges by this Order authorised. Provided also that a copy of this section shall be annexed to every table or list of rates published or exhibited by the promoters [or their lessees].

Miscellaneous.

Power to
corporation to
work tram-
ways.

36. Notwithstanding anything in the Tramways Act, 1870, to the contrary (*l*), the *corporation* may place and run carriages on, and may work and may demand and take rates and charges in respect of the tramways and in respect of the use of such carriages, and may provide such stables, buildings, carriages, trucks, horses, harness, engines, machinery, apparatus, steam, cable, electrical and other plant, appliances and conveniences as may be requisite or expedient for the convenient working or user of the said tramways by animal or mechanical power, and in such case the several provisions in this Order contained relating to the working of the tramways and the taking of rates and charges therefor shall extend and apply, *mutatis mutandis*, to and in relation to the *corporation*, and the *corporation* may work such tramways and demand and recover such rates and charges accordingly, but nothing in this section shall empower the *corporation* to construct any station for generating electrical power nor to create or permit a nuisance (*m*).

As to pur-
chase of
undertaking
by local
authorities.

[36A. Notwithstanding anything in this Order or in the Tramways Act, 1870, contained, the powers of purchase given by section 43 of that Act shall not be exerciseable by any of the local authorities of the districts through which the tramways shall pass until the expiration of a period of years from the date of this Order. The period of twenty-one years in the said section mentioned shall in respect of the undertaking be deemed to be the period of years from the said date, and the periods of seven years in the said section mentioned shall be deemed to be periods of seven years subsequent to such period of years (*n*).]

Regulations.

37. The regulations authorised by the Tramways Act, 1870, to be made by the promoters of any tramway and their lessees may, with respect to any tramways or portions of tramways for the time being belonging to and worked by the *corporation*, be made by the *corporation* alone (*o*).

Working
agreements.

38. The promoters may, with the consent of the Board of Trade, from time to time, but subject to the provisions of this Order—

(1) enter into and fulfil contracts and agreements with any

(*l*) See sect. 19 of the Act and note (*l*) thereto.

(*m*) See the authorities cited *ante*, pp. 226-7, 232.

(*n*) To be inserted where the promoters are not a local authority and it is desired to vary the terms of sect. 43 of the Act, as is now usual in tramway orders. Other purchase clauses, embodying the usual terms of purchase, will be found in the Model Order, *post*, pp. 623 *sqq.*, and the terms imposed on local authorities in note (*k*) to sect. 11 of Light Railways Act, 1896; and, generally, see the notes to sect. 43 of the Act.

(*o*) See sect. 46 of the Act and notes thereto.

person or local authority who are authorised to enter into such contracts and agreements and are the owners or lessees of any tramways in the borough or in any adjacent district which can be worked with any of the tramways of the *corporation* with respect to—

(a) the construction of the whole or any part of the tramways by this Order authorised;

(b) the use, maintenance and management by the contracting parties or any or either of them of the whole or any part of their respective tramway undertakings;

(c) the interchange, accommodation and forwarding of carriages, passengers and traffic coming from or destined for the respective undertakings of the contracting parties; and

(d) the fixing, collecting and apportionment of the rates, charges and other receipts arising from such traffic;

(2) confirm any such contracts and agreements which may have been entered into before the confirmation of this Order (*p*).

Insert, where the promoters are not a road authority, or not the sole road authority:—

39. The promoters and any road authority may, subject to the provisions of this Order and with the consent of the Board of Trade, from time to time enter into any agreements with respect to the construction, maintaining, renewing, repairing and using of the tramways situated within the district of such road authority, and the rails, plates, sleepers and works connected therewith, and the facilitating of the traffic over the same (*pp*).

Agreements with road authorities.

40. The promoters may include in any mortgage of the local rate made under section 20 of the Tramways Act, 1870, the moneys coming to them out of the rents reserved under any lease made under the authority of the Tramways Act, 1870, or this Order, and the rates, charges and sums authorised to be taken or received by them under the provisions of this Order (*q*).

Mortgages to include rents and rates.

41. Nothing in this Order or in the Tramways Act, 1870, contained shall prevent the promoters borrowing money on the security of mortgages of the undertaking, or shall make the consent or approval of the Board of Trade necessary to the validity or effect of any such mortgage. Provided that every mortgage of the undertaking shall be deemed to comprise all purchase-money which may be paid to the promoters in the event of a compulsory sale of the undertaking or any part thereof to the local authority under section 43 of the Tramways Act, 1870, as amended by this Order, and that

Saving as to powers of borrowing on mortgage.

(*p*) Other forms of this section will be found in sects. 54a, 54b of the Model Order, *post*, p. 612.

(*pp*) Compare sect. 29 of the Act and the notes thereto.

(*q*) See notes to sect. 20 of the Act.

any mortgage granted by the promoters shall not be a charge upon the undertaking or any part thereof in the event of the undertaking or such part being purchased by the local authority under the said section as so amended, and that every mortgage deed granted by the promoters shall be endorsed with notice to that effect (*r*).

Orders, &c.
of Board of
Trade.

42. All orders, regulations and by-laws made and consents and certificates given by the Board of Trade under the authority of this Order shall be signed by a secretary or an assistant-secretary of the Board, and when purporting to be so signed the same shall be deemed to be duly made in accordance with the provisions of this Order, and to be orders and regulations within the meaning of the Documentary Evidence Acts, 1868 and 1882 (*s*), and may be proved accordingly.

Recovery of
penalties.

43. Any penalty under this Order or under any by-laws or regulations made under this Order may be recovered in manner provided by the Summary Jurisdiction Acts (*t*).

Audit of
accounts.

44. Sections 246 and 250 of the Public Health Act, 1875 (*u*), shall apply to the audit of accounts of the receipts and expenditure of the promoters and their officers with respect to the tramways as if such accounts related to receipts and expenditure under that Act.

Protection
of local
authority.

45. Section 265 (protection of local authority and their officers from personal liability) of the Public Health Act, 1875, is hereby incorporated with this Order, and in construing that section for the purposes of this Order the expression "this Act" where used in that section shall mean this Order (*x*).

Power to hold
patents.

46. The promoters may, subject to the provisions of this Order (but only for the purposes of the undertaking, and not so as to acquire any exclusive right therein), acquire, hold and use any patent or other rights and any licences to use patent rights relating to the construction or working of tramways or carriages used thereon.

Form and
delivery of
notices.

47. With respect to notices and to the delivery thereof by or to the promoters, the following provisions shall have effect (that is to say) :—

(1.) Every notice, consent or approval shall be in writing, and if

(*r*) See *ante*, p. 189.

(*s*) 31 & 32 Vict. c. 37 and 45 & 46 Vict. c. 9.

(*t*) See sect. 56 of the Act and the notes thereto. In Scots Orders substitute Summary Jurisdiction (Scotland) Acts (contrast the terms of sect. 56 of the Act). These Acts are Summary Jurisdiction (Scotland) Acts, 1864 and 1881 (27 & 28 Vict. c. 53 and 44 & 45 Vict. c. 33), and any amending Acts (by Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (*s*)).

(*u*) 38 & 39 Vict. c. 55. Substitute sect. 247 for sect. 246 where the promoters are an urban district council who are not the council of a borough. The audit of the accounts of rural district councils, parish councils and parish meetings is provided for by Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 58.

Omit in Scots Orders.

(*x*) Omit this section in Scots Orders.

given by the promoters, or by any local or road authority or company, shall be signed by their clerk or secretary (*y*):

- (2.) Notices and other documents required or authorised to be served under this Order may be served in the same manner as notices under the Public Health Act, 1875 (*z*), are by section 267 of that Act authorised to be served. Provided that in the case of any local authority or company any such notice or other document shall be delivered or sent by post in a prepaid letter addressed to the clerk to the local authority at his office, or to the secretary of the company at their registered or principal office.

48. Where under the provisions of the Tramways Act, 1870, and this Order, any matter in difference is referred to the arbitration of any person nominated by the Board of Trade (*a*), the provisions of the Arbitration Act, 1889, shall apply to every such arbitration, and the decision of the arbitrator shall be final and conclusive and binding on all parties, and the costs of and incidental to the arbitration and award shall, if either party so require, be taxed and settled as between the parties by any one of the taxing masters of the High Court, and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation. Provisions as to arbitration.

[In Scots Orders substitute the following :—

48A.—(1.) Where under the provisions of the Tramways Act, 1870, or this Order, any question is to be referred to or determined by arbitration, that question shall, unless otherwise agreed, be referred to the Board of Trade, or, if the Board of Trade think fit, to an engineer or other fit person appointed as arbiter by the Board.

(2.) The Board of Trade Arbitrations, &c. Act, 1874 (*b*), shall apply with reference to the determination by the Board of any such question, or of any other matter under this Order, and to the appointment of an arbiter, as if this Order were a special Act within the meaning of sect. 4 of that Act.

(*y*) Where the promoters are a company read “secretary or clerk.”

(*z*) 38 & 39 Vict. c. 55.

In Scots Orders substitute for sect. 47 (2) the following:—Any notice to be delivered by or to the promoters to or by any body or any company or corporation may be delivered by being left at the principal office of such body, company or corporation, or at the office of the [clerk to the] promoters, as the case may be, or by being sent by post in a registered letter addressed to their respective clerk or secretary at their principal office, or to the clerk [secretary] to the said promoters.

(*a*) See sects. 30 and 33 of the Act, and sects. 17, 24 and 28b of this Order.

(*b*) 37 & 38 Vict. c. 40. See notes to sect. 63 of Tramways Act, 1870.

(3.) The costs of and incidental to any such arbitration and award shall be paid as directed by the arbiter, and shall, if either party so require, be taxed and settled as between the parties by the auditor of the Court of Session in Scotland.]

Saving for
general Acts.

49. Nothing in this Order contained shall exempt the promoters or any person using the tramways or the tramways from the provisions of any general Act relating to tramways passed before or after the commencement of this Order, or from any future revision or alteration under the authority of Parliament of the maximum rates of rates and charges authorised by this Order.

SCHEDULE.

MAXIMUM RATES AND CHARGES FOR ANIMALS, GOODS, &c.

	Per Mile.
	<i>s. d.</i>
<i>Animals.</i>	
For every horse, mule or other beast of draught or burdenper head	0 4
For every ox, cow, bull or head of cattle	0 3
For every calf, pig, sheep or other small animal	0 1½

Goods and Minerals.

For all coals, coke, culm, charcoal, cannel, limestone, chalk, lime, salt, sand, fireclay, cinders, dung, night soil, town refuse, compost and all sorts of manure and all undressed materials for the repair of public roads or highways	per ton	0 2
For all iron, iron-ore, pig-iron, bar-iron, rod-iron, sheet-iron, hoop-iron, plates of iron, slabs, billets and rolled iron, bricks, slag and stone, stones for building, pitching and paving tiles, slates and clay (except fireclay) and for wrought iron not otherwise specifically classed herein, and for heavy iron castings, including railway chairs	per ton	0 2½
For all sugar, grain, corn, flour, hides, dye, woods, earthenware, timber, staves, deals and metals (except iron), nails, anvils, vices and chains, and for light iron castings	per ton	0 3
For cotton, wools, drugs and manufactured goods, and all other wares, merchandise, fish, articles, matters or things not otherwise specially classed herein	per ton	0 4
For every carriage of whatever description		1 0

Small Parcels.

	Any Distance
	<i>s. d.</i>
For any parcel not exceeding 7 lbs. in weight	0 3
For any parcel exceeding 7 lbs. and not exceeding 14 lbs. in weight....	0 5
For any parcel exceeding 14 lbs. and not exceeding 28 lbs. in weight ..	0 7
For any parcel exceeding 28 lbs. and not exceeding 56 lbs. in weight ..	0 9
For any parcel exceeding 56 lbs. in weight but not exceeding 500 lbs. in	

weight, such sum as the person conveying the same may think fit:

Provided always that articles sent in large aggregate quantities, although made up in separate parcels, such as bags of sugar, coffee, meal and the like, shall not be deemed small parcels, but that term shall apply only to single parcels in separate packages.

For the Carriage of single Articles of great Weight.

Per Mile.

s. d.

For the carriage of any iron boiler, cylinder or single piece of machinery, or single piece of timber or stone, or other single article the weight of which, including the carriage, exceeds four tons but does not exceed eight tons, such sum as the person conveying the same may think fit, not exceeding per ton	2	0
For the carriage of any single piece of timber, stone, machinery, or other single article the weight of which with the carriage exceeds eight tons, such sum as the person conveying the same may think fit.		

Regulations as to Rates.

For articles or animals conveyed on the tramways for a less distance than a mile, rates and charges as for one mile may be demanded.

A fraction of a mile beyond an integral number of miles shall be deemed a mile.

For a fraction of a ton, rates and charges may be demanded and taken according to the number of the quarters of a ton in such fraction, and if there be a fraction of a quarter of a ton, such fraction shall be deemed a quarter of a ton.

With respect to all articles except stone and timber, the weight shall be determined according to Imperial avoirdupois weight.

With respect to stone and timber, fourteen cubic feet of stone, forty cubic feet of oak, mahogany, teak, beech or ash, and fifty cubic feet of any other timber, shall be deemed one ton weight, and so in proportion for any smaller quantity.

This schedule is very similar to the schedule to the Model Order, *post*, p. 633. It will be observed that this schedule does not relieve the promoters from the obligation to carry single articles of great weight, or provide for charges for loading and unloading. A rate for bicycles and tricycles may be added, if desired.

Part III.

LIGHT RAILWAYS.

THE LIGHT RAILWAYS ACT, 1896.

(59 & 60 Vict. c. 48.)

[NOTE.—In the notes to the Act the Board of Trade's Annual Report is cited thus: Rep. IX. 6, or Rep. (1903) XI. 6, as the case may be, the Roman figure referring to the number of the six-monthly list of applications, and the Arabic figure to the number of the application in such list. Before 1903 each annual report embodied the preceding reports, and the numbers of the lists and applications remained unchanged. "Rep.," therefore, refers to the 1902 Report, "Rep. (1903)" to the 1903 Report. The reference to the page of Mr. Oxley's Reports is given, where appropriate. It must be remembered, however, that the decisions of the Commissioners and of the Board of Trade are to be regarded rather as guides to practice than as judicial decisions.]

An Act to facilitate the Construction of Light Railways in Great Britain.

[14th August, 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1.) For the purpose of facilitating the construction and working of light railways (*a*) in Great

Establish-
ment of
Light Rail-

Sect. 1. Britain (*b*), there shall be established a commission, consisting of three commissioners, to be styled the Light Railway Commissioners (*c*), and to be appointed by the President of the Board of Trade.

way Com-
mission.

(2.) It shall be the duty of the Light Railway Commissioners to carry this Act into effect, and to offer, so far as they are able, every facility for considering and maturing proposals to construct light railways (*d*).

(3.) If a vacancy occurs in the office of any of the Light Railway Commissioners by reason of death, resignation, incapacity, or otherwise, the President of the Board of Trade may appoint some other person to fill the vacancy, and so from time to time as occasion may require.

(4.) There shall be paid to one of the Commissioners such salary, not exceeding one thousand pounds a year, as the Treasury may direct (*e*).

(5.) The Board of Trade may, with the consent of the Treasury as to number and remuneration, appoint and employ such number of officers and persons as they think necessary for the purpose of the execution of the duties of the Light Railway Commissioners under this Act, and may remove any officer or person so appointed or employed.

(6.) The said salary and remuneration, and all expenses of the Light Railway Commissioners incurred with the sanction of the Treasury in the execution of this Act shall, except so far as provision is made for their payment by or under this Act, be paid out of moneys provided by Parliament.

(7.) The Commissioners may act by any two of their number.

(8.) The powers of the Light Railway Commissioners shall, unless continued by Parliament, cease on the thirty-first day of December, one thousand nine hundred and one (*f*).

(*a*) For the meaning of "light railways," see *ante*, pp. 5, 7, and note (*d*) below.

(b) The Act does not extend to Ireland (sect. 27). For a list of the Light Railway Acts which apply to Ireland, see the note to sect. 2 of Tramways Act, 1870. Sect. 1.

(c) The present Commissioners are the Earl of Jersey, Colonel G. F. O. Boughey, R.E., and Mr. H. A. Steward; their secretary is Mr. A. D. Erskine, and their office is at 54, Parliament Street, London, S.W.

(d) It is to be observed that the object of the Act is to encourage the construction of light railways, and not to burden them with undue restrictions. Compare the note to the Rules (*post*, p. 527), which states that the Commissioners will be ready to assist in making proposals before an actual application is made. Up to the end of 1902, 420 applications for Light Railway Orders (including applications for amending Orders) were made to the Commissioners; of these, 212 were submitted by them to the Board of Trade for confirmation, 30 were approved but not yet submitted, 93 were rejected, 63 were withdrawn, and the balance of 22 remained to be dealt with.

The total mileage approved by the Commissioners amounted to 1,668½, which was estimated to cost 12,188,233*l*.

Since their institution the Commissioners have gradually defined the limits within which they will exercise their jurisdiction.

The most important decision was given at the outset in the *Crewe case* (1897), Rep. I. 2; Oxley, 111. It was there held, on the Law Officers' advice, that the Act was intended to cover light railways which were to be constructed wholly or mainly along public roads—that is to say, light railways which were in character nothing but tramways. (See also *London United Tramways case* (1898), Rep. IV. 17; Oxley, 164.) The Commission now divides all applications into three classes: Class A. including lines laid on lands acquired for the purpose, Class B. lines laid on public roads, and Class N. lines which cannot be classified in Class A. or Class B. The principle was definitely declared in the Light Railways Bill of 1901, clause 6. Even a hydraulic inclined railway has been sanctioned as a light railway under the Act. (*Ventnor case* (1898), Rep. III. 24.) But the following important exception must be noted, namely, that the Commissioners will not consider a scheme for a purely urban tramway situated wholly within one borough or urban district. (*Taunton case* (1897), Rep. II. 17; Oxley, 127; *Colchester case* (1899), Rep. V. 8; Oxley, 202; *Aberdare case* (1900), Rep. VI. 39; Oxley, 227; *Finchley case* (1900), Rep. VI. 15; Oxley, 249.) This is so, also, where the line is a disconnected portion of a larger scheme (*Hastings, Bexhill and District case* (1899), Rep. V. 22; Oxley, 227), but not where it is an integral part of a scheme extending outside a borough. (*Crewe case*, *ub. sup.*) In the *West Hartlepool case* (1897), Rep. I. 14; Oxley, 121, such a line was approved by the Commissioners, but this was before the *Taunton case*, *ub. sup.* In the *Corporation of London Foreign Cattle Market, Deptford, case* (1897), Rep. II. 2;

Sect. 1. Oxley, 120, the scheme was rejected on the ground that it sought compulsory powers and proposed to construct a light railway in streets within the metropolitan area.

An application will not be considered where a Parliamentary line has already been sanctioned on the same site (*Paisley case* (1898), Rep. IV. 35; Oxley, 182), or where it might upset an existing Parliamentary arrangement (*Rotherham and Laughton case* (1901), Rep. X. 14), and it will be jeopardised if powers for a similar line have already been refused by Parliament (compare *London United Tramways case* (1899), Rep. V. 27; Oxley, 224; and *Hastings, Bexhill and District case* (1899), Rep. V. 22; Oxley, 227), or if the local authority have made a similar application on their own behalf. (*Bath and District case* (1900), Rep. VI. 3; Oxley, 242.) Nor will the Commissioners be inclined to consider a scheme if Parliamentary powers are sought simultaneously by the promoters (*Hyde and Dukinfield case* (1900), Rep. VIII. 8), or to provide in their Order for any matter which is about to be submitted to Parliament. (*Dundee and Broughty Ferry case* (1898), Rep. IV. 32; Oxley, 176.)

An allegation that the local authority intends to construct the same or similar lines may or may not lead to the rejection of a scheme according to circumstances, and, in particular, according to the amount of local support given to the promoters' scheme. (Contrast *South Staffordshire case* (1899), Rep. V. 39; Oxley, 200; and *Barnsley and District case* (1899), Rep. V. 3, VII. 2; Oxley, 231, where the schemes were approved, with *Finchley, Hendon and District case* (1899), Rep. V. 19; Oxley, 212, where they were rejected.) In particular, a scheme has been approved, where it did not seem likely that the local authorities would be able to unite in a scheme of their own. (*Spen Valley case* (1899), Rep. V. 40.)

But a scheme has been rejected (*Penarth and Cardiff case* (1898), Rep. III. 26; Oxley, 161) or the construction has been ordered to be deferred (*Dundee and Broughty Ferry case* (1898), Rep. IV. 32; Oxley, 176), where the district in which the line lay was likely to come under the jurisdiction of a local authority, which would construct the lines. Schemes have also been rejected where a local authority proposed to apply again for an Order which it had once been refused. (*Crewe case* (1901), Rep. X. 6; *Tottenham, Walthamstow and Epping Forest case* (1901), Rep. X. 20.) And in one case an Order was granted conditionally on a local authority's bill for similar lines not passing. (*Spen Valley (Extension) case* (1900), Rep. VII. 34.)

The Commissioners have held that they have no power to authorise construction on private roads (*Middlesbrough, Stockton and Thornaby case* (1899), Rep. V. 28), and the Board of Trade have held it to be *ultra vires* to authorise, under this Act, a local authority to supply electric energy. (*Nelson case* (1899), Rep. V. 30, 31, VI. 27; Oxley, 203; and see note (r) to sect. 3.)

Sect. 1.

The Commissioners have stated that where the objection to their jurisdiction is of doubtful validity their practice is to take a note of it and embody it in their report to the Board of Trade. (*Dudley and District case* (1897), Rep. II. 5; Oxley, 135.)

(e) See, now, Light Railway Commissioners (Salaries) Act, 1901 (*post*, p. 526).

(f) Their powers are now extended till December 31, 1904, by Expiring Laws Continuance Act, 1903 (3 Ed. 7, c. 40).

2. An application for an order authorising a light railway under this Act shall be made to the Light Railway Commissioners (*g*), and may be made—

Application for orders authorising light railways.

- (a) by the council of any county, borough, or district, through any part of which the proposed railway is to pass (*h*); or
- (b) by any individual, corporation, or company (*i*); or
- (c) jointly by any such councils, individuals, corporations, or companies (*k*).

(g) Applications must be made in May or November (Rule XXXII.). The rules governing the mode of application will be found *post*, p. 527, and see also sect. 7 (1).

(h) For the Scots equivalents of these councils, see sect. 26 (2) and (6), and the notes thereto.

Compare with these words the list of local authorities who are entitled to apply for Provisional Orders in Sched. A. of Tramways Act, 1870, as varied by later enactments, which are given in the notes to that schedule. It will be noted that the present section, unlike that schedule, does not authorise applications by parish councils.

The expenses of councils' applications are provided for by sect. 16 (1), and, in Scotland, sect. 26 (5).

See sect. 3 (2 b) for the limitations imposed on councils in respect of applications for light railways wholly or partly outside their own districts.

Instances of Orders granted to councils for light railways on public thoroughfares are:—*County of Middlesex Order*, 1901, Rep. VI. 11, VII. 14 (to a county council); *Nelson Order*, 1901, Rep. V. 30, VI. 27, and *Colne and Trawden Order*, 1901, Rep. V. 31 (to corporations of boroughs); *Barking and Beckton Order*, 1899, Rep. IV. 2 (to an urban district council); *Halesowen Order*, 1901, Rep. IX. 9, and *Mitcham Order*, 1901, Rep. IX. 16 (to rural district councils).

Sect. 2.

No Order has hitherto been granted to a local authority for a light railway not on public thoroughfares.

It is essential that a local authority should have a full estimate of the expenses before them before promoting a scheme. (*County of Middlesex (Extensions) (No. 4) case* (1901), Rep. X. 5.)

(i) Nothing could be wider than these words. The Commissioners, however, rejected the application of a lunacy board as *ultra vires*. (*Uphall and Bangour case* (1899), Rep. V. 53; Oxley, 83.)

Sometimes an Order applied for by private promoters has been granted, by agreement, to the local authority. (*Bradford and Leeds Order*, 1900, Rep. III. 3; *Darlington Order*, 1902, Rep. VI. 12.)

It will be observed that the consent of local and road authorities is not a condition precedent to an application by private promoters, as it is under Tramways Act, 1870, s. 4; but sect. 7 (1) provides that such authorities shall be consulted. (See also *ante*, p. 6.)

Sect. 11 (e) provides for the constitution by the Order of a body corporate for the purposes of the Order. Where the promoters had registered themselves under the Companies Acts between the application and the local inquiry, the Commissioners insisted on incorporating a fresh company by the Order itself. (*Redditch and District case* (1898), Rep. IV. 25; Oxley, 185.)

(k) Joint committees of councils for the purposes of this subsection are provided for by sect. 17.

Besides joint applications by individuals, joint applications have been made by individuals and borough, district or county councils, either singly or in combination, by two district councils, by two companies, and by a county council and a company. The *Dartford Order*, 1902, Rep. IX. 6, which was applied for jointly by an urban and a rural district council, was granted, by agreement, to the urban district council alone; and in the *County of Hertford (No. 1) case* (1900), Rep. VII. 10, an Order applied for jointly by a county council and a company was to be granted, by agreement, to the former.

Powers of
local
authorities
under order.

3.—(1.) The council of any county, borough, or district (*l*), may if authorised by an order under this Act—

- (a) undertake themselves to construct and work, or to contract for the construction or working of, the light railway authorised (*m*);
- (b) advance to a light railway company (*n*), either by way of loan or as part of the share capital (*o*) of the company, or partly in one

way and partly in the other, any amount authorised by the order (*p*); Sect. 3.

- (c) join any other council or any person or body of persons in doing any of the things above mentioned (*q*); and
- (d) do any such other act incidental to any of the things above mentioned as may be authorised by the order (*r*).

(2.) Provided that—

- (a) an order authorising a council to undertake to construct and work or to contract for the construction or working of a light railway, or to advance money to a light railway company (*n*), shall not be made except on an application by the council made in pursuance of a special resolution passed in manner directed by the First Schedule to this Act (*s*); and
- (b) a council shall not construct or work or contract for the construction or working of any light railway wholly or partly outside their area, or advance any money for the purpose of any such railway (*t*), except jointly with the council of the outside area, or on proof to the satisfaction of the Board of Trade that such construction, working, or advance is expedient in the interests of the area of the first-mentioned council, and in the event of their being authorised so to do their expenditure shall be so limited by the order as not to exceed such amount as will, in the opinion of the Board of Trade, bear due proportion to the benefit which may be expected to accrue to their area from the construction or working of the railway (*u*).

(*l*) For the Scots equivalents, see sect. 26 (2) and (6).

(*m*) Contrast Tramways Act, 1870, s. 19, which forbids a local authority to work a tramway, and see note (*l*) thereto.

There does not seem to be anything here, or in sect. 11 (*c*), or in the definition of “light railway company” in sect. 28 to justify

Sect. 3. a transfer or delegation of powers otherwise than as authorised by the Order. As to the general rule against the delegation of powers, see note (n) to sect. 19 and note (g) to sect. 44 of *Tramways Act, 1870*. See further, as to this sub-section, the note to sect. 11 (c).

Clauses as to working agreements between local authorities and promoters will be found in *Nelson Order, 1901, Rep. V. 30, VI. 27*, and *Colne and Trawden Order, 1901, Rep. V. 31*. They set a limit on the amount to be expended for the purposes of such agreements.

(n) Defined in sect. 28. The advance may be either by loan or as part of the share capital, and therefore it does not seem to be necessary that the promoters should be incorporated to enable them to obtain an advance. Contrast sect. 4 (1).

(o) Defined in sect. 28. As to applications for advances by councils, see Rule XXXII. (g).

(p) The only applications made hitherto (other than applications withdrawn) for such an advance in respect of a light railway to be laid entirely on public thoroughfares were in the *Loughborough and District case (1900)*, Rep. VII. 26, and the *Nuneaton and District case (1900)*, Rep. VI. 28.

Instances of advances by local authorities authorised in the case of light railways (Class A.) will be found in *Forsinard, Melvich and Port Skerra Order, 1898, Rep. I. 22*; *Bridlington and North Frodingham Order, 1898, Rep. II. 1*; *Dornoch Order, 1899, Rep. I. 28*; *Welshpool and Llanfair Order, 1899, Rep. II. 23*; *Tanat Valley Order, 1899, Rep. II. 22*; *Leek, Caldon Low and Hartington Order, 1899, Rep. II. 9*; *Wick and Lybster Order, 1900, Rep. V. 54*.

These advances are governed by sect. 16, sub-sects. 2 to 6, and, in Scotland, sect. 26 (5). (See the notes to those sub-sections.) A model of the clauses and schedule which are usually inserted in Orders to give effect to these sections will be found *post*, pp. 579, 635. Sect. 11 (f) confers power to give councils who advance money a representation on the managing body of the railway, and this is usually exercised by the clause printed *post*, p. 553. The advance is usually authorised either by way of loan or as part of the share capital, but in the *Lauder Order, 1898, Rep. I. 25*, it was authorised as part of the share capital only.

(q) Compare sect. 2 and note (k) thereto. As to joint committees for these purposes, see sect. 17.

(r) See, further, the note to sect. 11 (m).

The Board of Trade held, very naturally, in the *Nelson case (1900)*, Rep. V. 30, 31, VI. 27; Oxley, 203, that a Light Railway Order could not confer on a local authority the power to supply electric energy, whether within or without their district, unless, of course, such power was incidental to the working of a tramway of which they were themselves promoters. As to the general

limitation of the supply of electric energy to the particular district for which it is authorised, see *Imperial Gas Light and Coke Co. v. West London Junction Gas Co.* (1868), W. N. 1; 58 L. T. 900 n.; and *Gas Light and Coke Co. v. South Metropolitan Gas Co.* (1889), 62 L. T. 126 (H. L.), decided on Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), s. 6. There have been cases, not reported, to a similar effect on Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 51.

(s) At the time of the application the clerk to the local authority must prove the particulars contained in Sched. I. by means of a statutory declaration and certified copies of the resolution passed and of the notice convening the special meeting.

(t) In the *Nelson case* (1900), Rep. V. 30, 31, VI. 27; Oxley, 203, the Board of Trade is reported to have stated that the Act did not permit an authority to work a light railway wholly outside its own district. This sub-section seems to assume that they have power either to construct or work such a railway if the proviso is complied with. On the other hand, sect. 2 (a) limits applications to councils through any part of whose district the proposed railway is to pass. The two sections can, it would seem, only be reconciled by taking sect. 3 (2 b) to refer to the construction or working of railways promoted by some one else, or by taking it as meant to cover the case where the proposed railway originally passed through the council's district, but where the portion in such district has been disallowed, so that the railway as authorised is wholly outside such district. *Southend-on-Sea and District Order*, 1899, Rep. V. 38, gave a local authority power to contribute to the expenses of road widening outside its district for the purposes of a light railway promoted by itself.

(u) The necessary particulars will be proved by the clerk to the local authority by statutory declaration. A form of such declaration will be found in the report of the *Southend-on-Sea and District case* (1899), Rep. V. 38; Oxley, 189. See also the recitals to the *Doncaster Corporation Order*, 1900, Rep. V. 15. The *City of Bath case* (1900), Rep. VII. 9, is an instance of a scheme which was rejected for want of sufficient proof under this proviso. It was subsequently approved when a fresh application had been made by the local authority jointly with private promoters. (*Bath and District case* (1900), Rep. VIII. 2.)

4.—(1.) Where the council of any county, borough, or district (x), have advanced or agreed to advance any sum to a light railway company (y), the Treasury may also agree to make an advance (z) to the company by lending them any sum not exceeding one quarter

Loans by
Treasury.

Sect. 4. of the total amount required for the purpose of the light railway and not exceeding the amount for the time being advanced by the council.

Provided that the Treasury shall not advance money to a light railway company (*y*) under this section, unless at least one-half of the total amount required for the purpose of the light railway (*a*) is provided by means of share capital (*b*), and at least one-half of that share capital (*b*) has been subscribed and paid up by persons other than local authorities (*c*).

(2.) Any loan under this section shall bear interest at such rate not less than three pounds two shillings and sixpence per centum per annum as the Treasury may from time to time authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer (*d*), and shall be advanced on such conditions as the Treasury determine.

(3.) Where the Treasury advance money to a light railway company (*y*) under this section, and the advance by the council to the company is made in whole or part by means of a loan, the loan by the Treasury under this section shall rank *pari passu* with the loan by the council.

(*x*) For the Scots equivalents, see sect. 26 (2) and (6).

(*y*) Defined in sect. 28. But the proviso to this sub-section appears to limit the meaning of the expression "light railway company" to cases where the promoters are incorporated, otherwise the provision as to share capital could not apply.

(*z*) Fifteen applications (see Rule XXXII (h)) have been made for loans under this section (all in connection with railways of Class A), but eight of these were alternative to an application under sect. 5. These applications have had little result. In the *Welshpool and Llanfuir case* (1897), Rep. I. 17, II. 23; Oxley 22, 7,500*l.* was to have been advanced under sect. 4 at 3½ p. c., but afterwards a free grant under sect. 5 was substituted for this. In the *Lauder case* (1897), Rep. I. 23, the Treasury in 1901 agreed to advance 11,000*l.* at 3½ p. c. (see Report for 1902, p. 1), and in 1902 to advance 2,500*l.* more on the same terms. (See Report for 1903, p. 3.) The original application contained no request for such loan. The total amount which the Treasury may advance is limited by sect. 6.

(a) As to the making of an estimate of expenses, see Rules XXX. Sect. 4.
and XXXI.

(b) Defined in sect. 28.

(c) "Local authorities" is not defined in this Act. For a definition, see Tramways Act, 1870, s. 3, and Sched. A. and notes thereto. *Quære* whether it covers more here than the councils mentioned above. Probably not, as sect. 2 gives them alone power to make advances to light railways.

(d) So Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 83; for rates of interest, see note (z) above.

5.—(1.) Where it is certified to the Treasury by the Board of Agriculture (e) that the making of any light railway under this Act would benefit agriculture in any district, or by the Board of Trade (e) that by the making of any such railway a necessary means of communication would be established between a fishing harbour or fishing village and a market, or that such railway is necessary for the development of or maintenance of some definite industry, but that owing to the exceptional circumstances of the district the railway would not be constructed without special assistance from the State, and the Treasury are satisfied that a railway company existing at the time will construct and work the railway if an advance is made by the Treasury under this section (f), the Treasury may, subject to the limitation of this Act as to the amount to be expended for the purpose of special advances (g), agree that the railway be aided out of public money by a special advance under this section (h). Special
advances by
Treasury.

Provided that—

- (a) the Treasury shall not make any such special advance unless they are satisfied that landowners, local authorities, and other persons locally interested have by the free grant of land or otherwise given all reasonable assistance and facilities in their power for the construction of the railway (i); and
- (b) a special advance shall not in any case exceed such portion not exceeding one-half of the

Sect. 5.

total amount required for the construction of the railway as may be prescribed by rules to be made by the Treasury under this Act; and

- (c) where the Treasury agree to make any such special advance as a free grant, the order authorising the railway may make provision as regards any parish that, during a period not exceeding ten years to be fixed by the order, so much of the railway as is in that parish shall not be assessed to any local rate at a higher value than that at which the land occupied by the railway would have been assessed if it had remained in the condition in which it was immediately before it was acquired for the purpose of the railway, but before such provision is made in any order the local and rating authorities of every such parish shall be informed of the intention to insert such provision, and shall be entitled to be heard. The order may authorise the Board of Trade to extend any such period (*k*).

(2.) A special advance under this section may be a free grant or a loan or partly a free grant and partly a loan (*l*).

(3.) Any free grant or loan for a special advance under this section shall be made on such conditions (*m*) and at such rate of interest (*n*) as the Treasury direct.

(*e*) In Scotland, the Secretary for Scotland. (Sect. 26 (1).)

(*f*) There may be various states of circumstances which will be held by the Treasury to comply with the preceding conditions, but this last condition is a *sine qua non*. (See the recital, *post*, p. 549.) The working agreement with an existing railway need not, however, necessarily be in perpetuity. In the *Welshpool and Llanfair case* (1897), Rep. I. 17, II. 23; Oxley, 22, an agreement for 99 years was considered by the Treasury to be sufficient. In the *Fraserburgh and St. Combs case* (1897), Rep. II. 25, the Order was made out in the name of the existing railway company, which had undertaken to construct and work the line, and the undertaking, including

Sect. 5.

the promise of a grant under this section, was transferred to them. Where a working agreement has not yet been concluded, the Treasury makes its grant conditionally on the conclusion of such an agreement. (*Kelvedon, Tiptree and Tollesbury case* (1897), Rep. II. 7; *Elsenham, Tharted and Bardfield case* (1897), Rep. I. 6.) The Commissioners will delay the settlement of an Order after the inquiry pending an application to the Treasury for financial assistance (*Witney, Burford and Andoversford case* (1900), Rep. VII. 41; *Pwllheli, Nevin and Porthamlleyn case* (1901), Rep. IX. 25); but in the *Hebridean case* (1898), Rep. IV. 34, the application was rejected without an inquiry when the promoters had failed to obtain a Treasury grant within three years. *Cromarty and Dingwall Order*, 1902, Rep. I. 21, contains provisions for the making of agreements between the promoters, the working company and the Treasury in relation to the Treasury advance.

(g) See sect. 6.

(h) Advances under this section have hitherto been made only to light railways of Class A. Occasionally the Treasury makes advances to ordinary statutory railways by special Act and scheduled agreement, *e.g.* West Highland Railway Guarantee Act, 1896 (59 & 60 Vict. c. 58). In 1902 the Treasury made a free grant of 3,000*l.* to the Welshpool and Llanfair line in addition to 14,500*l.* previously promised. (See Report for 1903, p. 3.)

(i) Sect. 19 gives landowners power to make free or cheap grants of land or to make contributions for the purposes of light railways. The Treasury made a grant in the *Fraserburgh and St. Combs case* (1897), Rep. II. 25; Oxley, 28, where two of the promoters had given their land free, although the landowner through whose property the railway passed for a third of its length objected to the scheme.

An application for assistance under this section is practically always coupled with an application for assistance from local authorities. (See Rule XXXII. (g) and (h).)

(k) The usual clause which is inserted under this sub-section will be found *post*, p. 580. Ten years is the period usually fixed, with power to the Board of Trade to extend it. The period has generally been expressed to run from the commencement of the Order (*e.g.* in *Wick and Lybster Order*, 1899, Rep. V. 54); but in *Welshpool and Llanfair Order*, 1899, Rep. II. 23, it runs from the completion and opening for public traffic of the railway, and in *Leek, Caldron Low and Hartington Order*, 1899, Rep. II. 9, and *Kelvedon, Tiptree and Tollesbury Order*, 1901, Rep. II. 7 (as modified by the Board of Trade), it runs from the date of the advance.

The clause generally extends to all the parishes through which the railway is to run, but in *Fraserburgh and St. Combs Order*, 1899, Rep. II. 25, certain only of such parishes are selected.

Sect. 5. Sect. 26 (9) and (10) contain provisions for the carrying out of this sub-section in Scotland.

As to rating in general, see *ante*, p. 49.

(*l*) The special advance is usually in the form of a free grant; but in the cases of the Leek, Caldon Low and Hartington, the Cromarty and Dingwall, and the Tanat Valley Light Railways the Treasury made a loan as well as a free grant, either in addition to or in substitution for a previous free grant.

(*m*) The usual conditions, besides those enumerated in this section, are that the Board of Trade should certify (a) that the line is complete and open for traffic; (b) that a sum not less than twice the amount of the advance, exclusive of the value of land granted by landowners, had been actually expended on the construction of the line. (*Dornoch case* (1897), Rep. I. 28; Oxley, 6; *Welshpool and Llanfair case* (1897), Rep. I. 17, II. 23; Oxley, 22; *Kelvedon, Tiptree and Tollesbury case* (1898), Rep. II. 7; Oxley, 59.) Further conditions were also imposed in the *Welshpool and Llanfair case*.

(*n*) The rate of interest was *nil* in the cases of the Cromarty and Dingwall and the Tanat Valley Light Railways, and 3 p.c. in the case of the Leek, Caldon Low and Hartington line. An advance at $3\frac{1}{2}$ p.c. and upwards would fall under sect. 4, and not under the present section.

Limitation
on amount
of advance
and provision
of money
by National
Debt Com-
missioners.

6.—(1.) The total amount advanced by the Treasury under this Act shall not at any one time exceed one million pounds, of which a sum not exceeding two hundred and fifty thousand pounds may be expended for the purpose of special advances under this Act (*o*).

(2.) The National Debt Commissioners may lend to the Treasury, and the Treasury may borrow from the National Debt Commissioners, such money as may be required for the purpose of advances by the Treasury under this Act, on such terms as to interest, sinking fund, and period of repayment (not exceeding thirty years from the date of the loan) as may be agreed on between the National Debt Commissioners and the Treasury.

(3.) The sums so lent by the National Debt Commissioners shall be repaid out of money provided by Parliament for the purpose, and if and so far as that money is insufficient shall be charged on, and payable

out of, the Consolidated Fund, or the growing produce thereof. Sect. 6.

(o) While sect. 4 has been scarcely put into force at all, as has already been pointed out, it was found that the sum of 250,000*l.* allowed for "special advances" was inadequate, and the Light Railways Bill of 1901, cl. 3, proposed to substitute the sum of 750,000*l.* for it.

The words "at any one time" are introduced because, where advances are made by way of loan, the sums advanced may, after repayment, be utilised again for the purpose either of loans or free grants.

7.—(1.) Where an application for authorising a light railway under this Act is made to the Light Railway Commissioners (*p*), those Commissioners shall, in the first instance, satisfy themselves that all reasonable steps have been taken for consulting the local authorities (*q*), including road authorities (*q*), through whose areas the railway is intended to pass (*r*), and the owners and occupiers of the land it is proposed to take (*s*), and for giving public notice of the application (*t*), and shall also themselves by local inquiry and such other means as they think necessary possess themselves of all such information as they may consider material or useful for determining the expediency of granting the application (*u*). Consideration
of application
by Light
Railway Com-
missioners.

(2.) The applicants shall satisfy the Commissioners (*u*) that they have

- (a) published once at least in each of two consecutive weeks, in some newspaper circulating in the area or some part of the area through which the light railway is to pass, an advertisement describing shortly the land proposed to be taken and the purpose for which it is proposed to be taken, naming a place where a plan of the proposed works and the lands to be taken, and a book of reference to the plan, may be seen at all reasonable hours, and stating the quantity of land required (*t*); and

Sect. 7.

- (b) served notice in the prescribed manner on every reputed owner, lessee, and occupier of any land intended to be taken, describing in each case the land intended to be taken, and inquiring whether the person so served assents to or dissents from the taking of his land, and requesting him to state any objections he may have to his land being taken (*s*).

The plan and book of reference shall be in the prescribed form (*v*), and for the purposes of this section the expression "prescribed" shall mean prescribed by rules made under this Act (*x*).

(3.) The Commissioners shall before deciding on an application give full opportunity for any objections to the application to be laid before them, and shall consider all such objections, whether made formally or informally (*y*).

(4.) If after consideration the Commissioners think that the application should be granted (*z*), they shall settle any draft order submitted to them by the applicants for authorising the railway (*a*), and see that all such matters (including provisions for the safety of the public and particulars of the land proposed to be taken) are inserted therein, as they think necessary for the proper construction and working of the railway (*b*).

(5.) The order of the Light Railway Commissioners shall be provisional only, and shall have no effect until confirmed by the Board of Trade in manner provided by this Act (*c*).

(6.) Where an application for a light railway has been refused by the Light Railway Commissioners, the applicants, if the council of any county, borough, or district (*d*), may appeal against such refusal to the Board of Trade, who may, at any time if they think fit, remit the application or any portion thereof to the

said Commissioners for further consideration with or without special instructions (*e*). Sect. 7.

(*p*) See Rules XXXII. and XXXIII. as to the application and the documents which are to accompany and follow it.

(*q*) There is no definition of "local authorities" and "road authorities" in this Act, but there seems to be no reason why "local authorities," as used here, should not include parish councils. Reference may be made to Tramways Act, 1870, s. 3, and Sched. A., and the notes thereto.

The present provision, that the local and road authorities shall be merely "consulted," is in strong contrast to that of Tramways Act, 1870, s. 4, whereby the consent of local authorities and road authorities is a condition precedent to an application for an Order, and to Standing Order 22, *ante*, p. 387, which embodies the same principle. "Consulting" is a purposely indefinite word; any sort of negotiations with regard to the proposed railways would apparently be a "consulting" (see the *South Staffordshire case* (1899), Rep. V. 39; Oxley, 200). A statement of their assent or dissent must accompany the application, by Rule XXXII. (d).

As to deposits with local authorities, see Rule IV., and as to notice to road authorities, see Rule XXVII.

The intention of the Act, then, is that local and road authorities should not have the power of preventing the authorisation of a scheme, but their opposition, as being the opposition of the general representatives of the districts through which the railways are to pass, has great weight with the Commissioners, and, except under special circumstances, may prove fatal to the scheme.

Instances of cases where the Commissioners did not think it right to overrule the opposition of all or most of the local authorities affected are *London, Barnet, Edgware and Enfield case* (1898), Rep. IV. 15; *Finchley, Hendon and District case* (1899), Rep. V. 19; *Kingston, Surbiton and District case* (1900), Rep. VII. 20; *Oldham, Ashton-under-Lyne, Hyde and District (Extensions) case* (1900), Rep. VII. 32; and *Kingston, Surbiton and District (Extensions) case* (1900), Rep. VIII. 11. Sometimes a portion of a scheme which lies in the district of a particular local authority is rejected, as in the *Poole and District case* (1898), Rep. IV. 24; Oxley, 173.

But a scheme has been rejected, in spite of the assent of the local authority, if local feeling was generally against it (*Burnham, Berrow and Brent Knoll case* (1898), Rep. IV. 4; Oxley, 62), and natural difficulties, coupled with local dissent, have been held to outweigh the local authorities' approval. (*Llanfair and Beaumaris case* (1898), Rep. III. 25; Oxley, 155.)

(*r*) It is submitted that the powers of the promoters are limited to the districts in which their works have been authorised; otherwise

Sect. 7.

they might carry out works to which local and road authorities would have had no opportunity of objecting before the Commissioners, as they would have received no notice of such works under Rules IV. and XXVII., or under this section. The question has arisen in the case of the Dudley and District Light Railways, under a clause similar to that set out *post*, p. 590. This clause gives the company power to place apparatus for the purposes of their railway "on, in, under or over any road." It is submitted that this gives them no power to do works on a road not within the districts enumerated in the title to the Order, and that, on the refusal of the road authority to consent, as in the Dudley case, the company are not entitled to an arbitration under that clause.

(s) "Owner" is defined for this purpose in Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 3, as "any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking."

As to these notices, see Rules XXVI., XXXIV., XXXV. and Schedule. A statement as to the assents and dissents is to be deposited with the Commissioners, by Rule XXXIII., within the period therein provided.

On preliminary objections being taken at the local inquiry, non-compliance with these provisions was held to be fatal to the schemes in the *Devon, South Hams, case* (1900), Rep. VII. 15, and the *Hayling Island case* (1900), Rep. VIII. 7, and the same view was taken where the application was to work a railway, for the construction of which Parliamentary powers were in existence, as a light railway under sect. 16. (*Gifford and Garvald case* (1896), Rep. I. 23; Oxley, 31.) It appears that a fresh issue of notices to persons not affected by the alterations may be dispensed with, where a fresh and amended application is made. (*Trent Valley case* (1898—9), Rep. IV. 29, V. 41; Oxley, 65.)

(t) See Rules I. to III. In the *Finchley, Hendon, Edgware and District case* (1899), Rep. VI. 16; Oxley, 246, it was held that the publication of a notice in a special edition of the local newspaper did not comply with the Act and Rules, and the application was rejected without local inquiry.

(u) The intention of the Act is that the Commissioners shall, (i.) as a preliminary step, satisfy themselves that an opportunity has been given to the public to protect themselves by notices and advertisements as prescribed by this section and the Rules, and (ii.) proceed to come to a conclusion as to the merits of the application by local inquiry, primarily, and also by any other means which they think it advisable to adopt. The first point is met by the proof of compliance, the form of which is set out *post*, p. 543. As to the second point, the section contemplates the holding of a local inquiry in every case, and this is in fact done in practice except (a) where the

promoters have not complied with point (i.); (b) where the Commissioners consider that the scheme is, on the face of it, not within their jurisdiction, *e.g.*, a purely urban tramway (see note (d) to sect. 1; *Colchester case* (1898), Rep. V. 8), and (c) in the case of applications for amending Orders under sect. 24, where the circumstances do not call for a local inquiry (see note (k) to that section). Frequently, where schemes are competitive, or alternative, or closely connected, only one local inquiry is held in respect of two or more applications. The Act makes no provision, and no rules have been made under sect. 15 (2), with regard to the procedure at these local inquiries. They must not be regarded as strictly formal inquiries, such as those for which the procedure is laid down in Tramways Act, 1870, s. 63, and the other instances cited in note (c) to that section.

Not unnaturally, the procedure of Parliamentary Committees is followed as far as possible. Clauses, however, on account of the pressure of business, are settled for the most part by subsequent correspondence, and the Commissioners take a larger part in the actual settlement of them, and in their admission to the Order when settled, than is the case with Parliamentary Committees. The Commissioners are not willing to allow the postponement of an inquiry when the arrangements have been made. (*Watford and District case* (1899), Rep. VI. 36.) The time and place of the local inquiry is made known by local advertisements, and by notices to the owners and occupiers, local and road authorities and objectors. The object of the inquiry is to learn the practicability and advantages of the proposed scheme and the objections thereto (see *Basingstoke and Alton case* (1897), Rep. I. 11; Oxley, 1), and sometimes the Commissioners adopt supplemental means for the same purpose, as the section suggests, *e.g.*, inspection of the proposed route. (*County of Middlesex (No. 2) case* (1900), Rep. VII. 14.)

(v) See Rules X. to XVIII., and as to the deposit of the plan and book, Rules IV. to VI. In the *Chatham, Rochester and Gillingham case* (1898), Rep. IV. 5, Rule V. (formerly IV.) was not complied with, and the scheme was withdrawn. In the *Monmouth and Abergavenny case* (1897), Rep. III. 18, the application was rejected without local inquiry for non-compliance with Rule IV. (formerly III.).

Rules IV. to VI. also require the deposit of sections, as to which see Rules XIX. to XXV.

(x) These are printed *post*, p. 527.

(y) Rule VII. provides that objections should be made in writing, and that copies thereof should be sent to the promoters. No doubt this course is the most convenient, and should be adopted wherever it is practicable. But it would seem that, in the face of the terms of this sub-section, the Commissioners could not refuse to hear an objection however presented.

Sect. 7. *Objectors.*—The *locus standi* of objectors, and the species of objectors who have been heard, have been discussed *ante*, p. 45. Objectors may appear either personally or by their agent. (*R. v. St. Mary Abbots, Kensington*, [1891] 1 Q. B. 378; 60 L. J. M. C. 52 (C. A.).) There is no provision in the Act or Rules as to the costs of objectors, and the Commissioners have refused to provide for the payment by the promoters of an objecting landowner's costs. (*Bourne Valley case* (1899), Rep. VI. 7; Oxley, 100.)

Objections.—It will be useful to tabulate here instances of objections which have been made in practice.

(i.) Interference with existing private rights.

That the line will run too near powder mills, that it will cause flooding, that it will interfere with salmon fishing, that it will cause severance or undue discomfort to owners, occupiers or frontagers, that it will interfere with a private owner's ownership of a road or a tramway laid thereon.

(ii.) Interference with public rights.

That the line is proposed along roads which are too narrow for the purpose, and, in particular, that no sufficient provision has been made for widening them (*Hounslow, Slough and Datchet case* (1902), Rep. (1903) XI. 20), that the route is too steep, that it will cause undue interference with and diversion of public roads.

Local authorities have asked unsuccessfully that these disadvantages should be diminished by a clause that the promoters should pave and maintain level crossings and the approaches to bridges.

(iii.) Insufficient public advantage.

That the line, as proposed, does not extend far enough to serve the public convenience, that it will not provide sufficiently direct access to a market, that it will not benefit agriculture. The abandonment of part of a scheme may deprive the remainder of public utility. (*Surrey and Sussex case* (1902), Rep. (1903) XII. 19.)

iv.) That the line will not and cannot pay.

(v.) Physical interference with, or interference with the traffic of, an existing railway or tramway or other transport undertaking, such as canals or harbours.

By an unsatisfactory junction, by a level crossing, by a bridge, by interference with the approaches to a station, or by bringing an unmanageable amount of traffic on to an existing railway or tramway.

Provisions as to junctions will be found in sect. 23.

(vi.) Competition with railways, tramways or canals.

This is one of the matters which sect. 9 (3) provides that the Board of Trade shall consider, and in consequence it was for some time the practice of the Commissioners, though there seems to have been little to justify the practice, merely to take a note of this class of objections, and to leave them for consideration to the Board of

Trade. But their practice now rightly is to admit evidence and argument upon them before themselves. (See also note (i) to sect. 9.)

Sect. 7.

For the purposes of competition, a light railway of Class B must be regarded as a railway and not as a tramway, inasmuch as provision is made by the Order for the carriage of goods as well as of passengers, however little the power to carry goods is likely to be exercised. (*Coatbridge and Airdrie case* (1898), Rep. III. 30; Oxley, 149; *London United Tramways case* (1898), Rep. IV. 17; Oxley, 164.) In the *Bere Alston and Calstock case* (1899), Rep. VI. 4; Oxley, 102, the Commissioners seem to have heard the promoters of a then unconfirmed Light Railway Order, but to have refused to hear the railway company, which was to work it but had not yet concluded an agreement for the purpose. In one case a competing railway company sought unsuccessfully to have a clause inserted forbidding the promoters to take up or set down traffic within a certain area. (*Vale of Rheidol Light Railway (Aberayron Extension) case* (1898), Rep. III. 28; Oxley, 42.)

(vii.) Interference with the rights of the Crown, with commons, and with scenery and objects of historical interest. For objections based on these, see sects. 20, 21 and 22 respectively, and the notes thereto.

(viii.) That the Commissioners have no jurisdiction. For objections going to the jurisdiction, see note (d) to sect. 1.

Instances of clauses inserted as the result of objections will be found in the notes to sect. 11.

(z) Apart from any special objections to any particular scheme, the principal matter which the Commissioners have to consider is the question whether the proposed line offers sufficient advantages to the public to justify a grant of the powers which are sought by the promoters.

The amount of public advantage, which the promoters will be required to show, will vary with the amount of opposition to the scheme (see *Hayling Island case* (1901), Rep. IX. 10). If there is considerable local opposition, the Commissioners will require to be very thoroughly convinced that the interests of the districts will be served by the scheme before they sanction it. (*Midland and South Western Junction Railway (Ludgershall and Military Camps) case* (1898), Rep. IV. 19; Oxley, 43; *Finchley, Hendon and District case* (1898), Rep. III. 8; *Ryde and Sea View case* (1899), Rep. VI. 33; *Lastingham and Sinnington case* (1897), Rep. II. 8; *Inverness and Lochend case* (1899), Rep. V. 50; *West Manchester case* (1897), Rep. II. 19.) In such circumstances, for instance, the fact that a line is mainly intended to meet the requirements of tourists, and not those of the district, may prove fatal to it. (*Lynmouth and Minehead case* (1898), Rep. IV. 18.) And utility for building purposes will not justify the scheme, if there is no sufficient present demand for it. (*Cuckmere Valley case* (1898), Rep. III. 7.) Sometimes the withdrawal or

Sect. 7. rejection of an essential part of a scheme prevents the remainder from having sufficient public advantage to justify it. (*Paisley case* (1898), Rep. IV. 35; *Wolverhampton and Bridgnorth case* (1899), Rep. VI. 37.)

The Commissioners also themselves, apart from any specific objection, consider the financial prospects of the scheme, and will reject it if it does not seem likely to prove profitable (*Nutley, Crowborough and Groombridge case* (1899), Rep. V. 34; *Norwich and Dereham case* (1900), Rep. VIII. 15), or if they are not satisfied with the manner in which the financial position is placed before them. (*Preston and Lytham case* (1901), Rep. X. 13.) For similar reasons, a part only of a scheme may be rejected (*Kelvedon, Coggeshall and Halstead case* (1898), Rep. IV. 13; Oxley, 70), or withdrawn on the suggestion of the Commissioners. (*Mid-Suffolk case* (1899), Rep. VI. 26.)

When two or more competing schemes have been presented to the Commissioners, they have decided in favour of one rather than of the others on the ground that it had greater local support (*Abergavenny and Monmouth case* (1898), Rep. III. 1, IV. 20; *Penzance, Newlyn and West Cornwall case* (1899), Rep. V. 26, 36), that it provided more direct access to the market town of the district (*Welshpool and Llanfair case* (1897), Rep. I. 17, II. 23), or that it did not involve a break of gauge and ran over a less difficult route (*Tanat Valley case* (1897), Rep. II. 21, 22; Oxley, 25). Where the same scheme is promoted by private promoters and also by a local authority, the Commissioners will incline to prefer the latter. (*Tottenham and Walthamstow case* (1902), Rep. (1903) XI. 36; *Walthamstow and District (Urban District Council) case* (1902), Rep. (1903) XI. 38.)

Sometimes the Commissioners grant the application conditionally. Conditions imposed hitherto have been: that certain arrangements should be made for widening roads (*Redditch and District case* (1898), Rep. IV. 25; *Southend-on-Sea and District case* (1899), Rep. V. 38; Oxley, 189; *South Staffordshire case* (1899), Rep. V. 39; Oxley, 200); that proper access to a river should be afforded (*Dartford District case* (1897), Rep. II. 3, VI. 13); that certain necessary extensions should be made (*Brackenhill case* (1899—1900), Rep. VI. 8, VII. 5); that responsible persons should be named as directors (*Orpington, Cudham and Tatsfield case* (1899), Rep. V. 35). A part of a scheme has been approved, subject to the non-passing of a local authority's Bill for similar lines (*Spen Valley (Extensions) case* (1900), Rep. VII. 34).

The Commissioners would only approve an Order for extension of time on receiving satisfactory assurances as to the financial prospects of the scheme in the *Crowland and District (Amendment) case* (1901), Rep. X. 7.

An application is sometimes granted subject to a special report to the Board of Trade (see note (*f*) to sect. 8). Sect. 7.

(*a*) Sometimes the Commissioners defer the settlement of the Order pending the conclusion of necessary arrangements, as, for instance, for the obtaining of Treasury assistance (see note (*f*) to sect. 5), for the proper construction of a junction (*Cromarty and Dingwall case* (1897), Rep. I. 21), for the settlement of terms as to the crossing of a canal by the proposed line (*Warrington and Northwich case* (1901), Rep. IX. 22), for the grant of the Order to a local authority in lieu of the promoters, or in lieu of the promoters and the local authority jointly (*Darlington case* (1899), Rep. VI. 12; *Gloucester and District case* (1900), Rep. VII. 18; (1902), Rep. (1903) XII. 5, 9; *County of Hertford (No. 1) case* (1900), Rep. VII. 10), for the conclusion of an agreement between joint promoters (*County of Middlesex case* (1900), Rep. VI. 11), or for negotiations with landowners (*Llandudno and Colwyn Bay (Deviation and Amendment) case* (1902), Rep. (1903) XI. 44).

Schemes or portions of schemes under two applications are not seldom embodied by the Commissioners in a single Order, generally where a later application seeks an extension or amendment of a former scheme. (*Rochester, Chatham and District case* (1898), Rep. III. 22, IV. 26; *Barnsley and District case* (1899), Rep. V. 3, VII. 2; *Mansfield and District case* (1900), Rep. VII. 28, VIII. 12; *Mid-Anglian case* (1900), Rep. VII. 29, VIII. 13; *Brackenhill case* (1899—1900), Rep. VI. 8, VII. 5.)

The Commissioners have in a good many cases allowed variations from the deposited plans and books of reference, generally for the purpose of meeting objections.

(*a.*) *Deviations.*—Before a deviation is permitted the promoters must advertise and deposit a revised plan, book of reference and section, showing the proposed deviation, in the same manner as advertisements and deposits are made under the Rules, and must satisfy the Commissioners that the consents of the individuals and local authorities affected by the proposed deviation have been obtained. (*Pewsey and Salisbury case* (1897), Rep. II. 14; Oxley, 39; *Sheppey case* (1898), Rep. III. 23; Oxley, 53; *Colne and Trawden case* (1898), Rep. V. 9, 31; Oxley, 208; compare also *Cheltenham and District case* (1897), Rep. I. 1.)

But it is essential that all persons and bodies affected should consent; even if the landowners agree, and all the proper preliminaries have been performed, the subsequent dissent of a local authority will prove fatal. (*Llandudno and Colwyn Bay case* (1897), Rep. II. 20; Oxley, 131.) And, in particular, the promoters must acquire all the land required for the deviation by agreement, and must prove that they can do so; the Commissioners have no jurisdiction to grant compulsory powers for the purpose. (*Grimby and*

Sect. 7. *Saltfleetby case* (1898), Rep. III. 10; Oxley, 45; *Sheppey case*, *ib. sup.*)

(b.) *Extensions*.—The above remarks apply to these also. (See *Tunat Valley case* (1897), Rep. II. 22; Oxley, 25; *Potteries case* (1897), Rep. I. 13; Oxley, 116; *Middleton case* (1898), Rep. III. 17; Oxley, 137; *Merthyr Tydfil case* (1898), Rep. IV. 30; Oxley, 183.)

(c.) *Alterations of gauge*.—These have been permitted by the Commissioners in various cases, *e.g.*, *Leek, Caldon Low and Hartington case* (1897), Rep. II. 9; Oxley, 51 (3 ft. 6 in. to 2 ft. 6 in.); *Cheltenham and District case* (1899), Rep. V. 7; Oxley, 217 (4 ft. 8½ in. to 3 ft. 6 in.); *Nelson case* (1899), Rep. V. 30, 31; Oxley, 203 (4 ft. 8½ in. to 4 ft.).

As to separate amending Orders, see sect. 24 and notes thereto.

The name of a scheme is sometimes changed in the Order, owing to changes in the scheme imposed by the Commissioners (*e.g.*, *Kelvedon, Coggeshall and Halstead case* (1898), Rep. IV. 13, leading to *Coggeshall Order*, 1900), or for other reasons (*Lincolnshire and Northamptonshire case* (1897), Rep. II. 10, leading to *Crowland and District Order*, 1898).

(b) See sect. 11 and notes thereto.

(c) See sects. 8, 9 and 10 and notes thereto. When so confirmed the Order has effect as if enacted by Parliament (sect. 10).

(d) For the Scots equivalents, see sect. 26 (2) and (6).

(e) There was such an appeal in the *Finchley case* (1900), Rep. VI. 15; Oxley, 249, where the Commissioners had rejected the scheme on the ground that it was contained within a single urban district. The Board of Trade refused to remit the application.

It will be observed that promoters other than the councils named have no appeal under this section. Neither is any appeal given from a refusal of part only of an application, although the Board of Trade have power to remit “the application or any portion thereof.”

Submission
of order to
Board of
Trade for
confirmation.

8.—(1.) The Commissioners shall submit any order made by them under this Act to the Board of Trade for confirmation, accompanied by such particulars and plans as may be required by the Board, and shall also make and lay before the Board with the order a report stating the objections which have been made to the application, and the manner in which they have been dealt with, and any other matters in reference to the order which the Commissioners may think fit to insert in the report (*f*).

(2.) The Board of Trade shall give public notice of any order so submitted to them in such manner as they think best for giving information thereof to persons interested, and shall also state in the notice that any objections to the confirmation of the order must be lodged with the Board and the date by which those objections must be lodged (*g*).

(*f*) Until the *Coatbridge and Airdrie case* (1898), Rep. III. 30; Oxley, 149, the Commissioners used merely to make a report of objections founded on alleged competition, but did not hear evidence or arguments upon them, leaving them to be dealt with by the Board of Trade. In the *Dudley and District case* (1897), Rep. II. 5; Oxley, 135, the Commissioners stated that where parties objected to their jurisdiction they embodied the objection in their report, unless their jurisdiction was clear.

In the *Pewsey and Salisbury case* (1897), Rep. II. 14, the Commissioners made a special report as to the opposition of the War Department, and granted the Order subject thereto.

The Board of Trade refuse to allow parties to see the Commissioners' report. (*Dundee and Broughty Ferry case* (1898), Rep. IV. 32; Oxley, 176.)

By sect. 9 (2), the Commissioners are to give assistance generally to the Board.

(*g*) Notice is given in the London or Edinburgh Gazette and in local newspapers, stating that the Commissioners have submitted the Order for confirmation, and that any objections to the confirmation of the Order should be addressed to the Assistant Secretary (Railway Department), Board of Trade, and must be lodged on or before a certain day (usually between three and four weeks later); that these should be accompanied by copies of any clauses or amendments that may be desired to remove the objections; and copies of the objections. clauses and amendments should at the same time be sent to the promoters' agent; lastly, that copies of the Order submitted may be obtained at not more than one shilling per copy from the promoters' agent.

The Board of Trade will not allow objections to be taken which have not been lodged within the time limited in the notice, except those which are germane to the objections duly lodged (*London United Tramways case* (1898), Rep. IV. 17; Oxley, 164), unless, apparently, by consent. (*Liverpool and Prescott case* (1899), Rep. IV. 14; Oxley, 180.)

9.—(1.) The Board of Trade shall consider any Consideration

Sect. 9.
of order by
Board of
Trade.

order submitted to them under this Act for confirmation with special reference to (*h*)—

- (a) the expediency of requiring the proposals to be submitted to Parliament (*i*); and
- (b) the safety of the public (*k*); and
- (c) any objection lodged with them in accordance with this Act (*l*).

(2.) The Light Railway Commissioners shall, so far as they are able, give to the Board of Trade any information or assistance which may be required by the Board for the purpose of considering any order submitted to them or any objection thereto (*m*).

(3.) If the Board of Trade on such consideration are of opinion that by reason of the magnitude of the proposed undertaking (*n*), or of the effect thereof on the undertaking of any railway company existing at the time, or for any other special reason relating to the undertaking, the proposals of the promoters ought to be submitted to Parliament, they shall not confirm the order (*i*).

(4.) The Board of Trade shall modify the provisions of the order for ensuring the safety of the public in such manner as they consider requisite or expedient (*k*).

(5.) If any objection to the order is lodged with the Board of Trade and not withdrawn, the Board of Trade shall consider the objection and give to those by whom it is made an opportunity of being heard (*l*), and if after consideration they decide that the objection should be upheld, the Board shall not confirm the order, or shall modify the order so as to remove the objection (*o*).

(6.) The Board of Trade may, at any time, if they think fit, remit the order to the Light Railway Commissioners for further consideration (*p*), or may themselves hold or institute a local inquiry, and hear all parties interested (*q*).

(*h*) Points (a) and (b) are matters which it is the duty of the

Board of Trade to consider, whether objections based upon them have in fact been raised or not; though they do in fact frequently form the basis of objections.

Sect. 9.

(i) This Act does not confer any power on the Board of Trade to submit the scheme to Parliament. The promoters must follow the usual course, if they are so advised. The matter was discussed in the *Pewsey and Salisbury case* (1897), Rep. II. 14; Oxley, 39, and was to have been put right by the Light Railways Bill of 1903, cl. 3, which provided that the Board might bring in a bill for the confirmation of an Order rejected by them under these sub-sections, which, if opposed, should follow the ordinary course of private bills. Compare the provisions to meet a similar situation in the case of applications under Private Legislation Procedure (Scotland) Act, 1899, *ante*, pp. 311, 312. It is clear, on the construction of sub sect. 3, that the two reasons specially mentioned are (a) the magnitude of the proposed undertaking; and (b) the effect of the undertaking on an existing railway, not "the magnitude of the effect." The Board of Trade seem, in fact, to have followed this construction, and to have regarded any material effect on an existing railway to be a ground for refusing to confirm an Order, whatever the magnitude of the effect may be; although in the report of the *Coatbridge and Airdrie case* (1898), Rep. III. 30; Oxley, 149, 152, they are said to have approved of the other construction of the sub-section. See, however, as to this, *London United Tramways case* (1898), Rep. IV. 17; Oxley, 164, 167.

(i) *The magnitude of the undertaking.*

There has hitherto been no instance of a refusal to confirm on this ground alone. It was suggested as an objection in the *London United Tramways case* (1898), *ub. sup.*, in conjunction with competition.

(ii) *Competition with an existing railway.*

It will be observed that nothing is said here about competition with an existing canal or tramway, though such competition, one would think, might be just as good a ground for a submission to Parliament. See note (y) (vi) to sect. 7. Competition with a canal was made a ground of objection before the Commissioners in the *North Holderness case* (1897), Rep. II. 12; Oxley, 33, and the *Merthyr Tydfil case* (1898), Rep. IV. 30; Oxley, 183.

It has already been observed (see note (y) (vi) to sect. 7), that the Commissioners formerly did not hear evidence and arguments as to competition, but left the matter to be dealt with by the Board of Trade, owing to the provisions of this section. They now hear evidence and arguments; but still, in some cases, after hearing the evidence, leave the decision of the matter to the Board of Trade. (*County of Hertford (No. 1) case* (1900), Rep. VII. 10; *Tickhill case* (1900), Rep. VII. 35.) On the other hand, the Commissioners have themselves rejected several schemes on the ground of com-

Sect. 9.

petition without submitting them to the Board of Trade (*Musselburgh case* (1899), Rep. V. 51; *Hamilton, Motherwell and Wishaw case* (1899), Rep. V. 49; *Bridgwater, Langport and Glastonbury case* (1899), Rep. VI. 9; *South Shields, Sunderland and District case* (1901), Rep. X. 18; *Derby, Nottingham and District case* (1902), Rep. (1903) XI. 12; *Erewash Valley case* (1902), Rep. (1903) XII. 17; *Luton, Dunstable and District case* (1902), Rep. (1903) XI. 23; *Preston and Lytham case* (1902), Rep. (1903) XI. 30; *Ramsbottom, Edenfield and Rawtenstall case* (1902), Rep. (1903) XI. 31; *Stroud and Gloucestershire case* (1902), Rep. (1903) XII. 18), even where the local authorities were in favour of the scheme. (*London United Tramways case* (1899), Rep. V. 27.) In the *Burton and Ashby case* (1902), Rep. (1903) XI. 2, XII. 2, the Commissioners rejected the application of private promoters on the ground of competition with a railway company, but approved a similar application made by the railway company themselves.

Instances of rejection by the Board of Trade on the ground of competition under this section will be found in the *Coatbridge and Airdrie case* (1898), Rep. III. 30; Oxley, 149; the *Dundee and Broughty Ferry case* (1898), Rep. IV. 32; Oxley, 176; *Rhondda Valley case* (1901), Rep. VI. 40, IX. 26; *Staines and Egham case* (1901), Rep. VIII. 18.

(iii) *Other reasons.*

Among these might well be the pendency of a bill for the same or similar purposes in Parliament, or the proposed interference with rights already conferred by Parliament. (See note (d) to sect. 1.)

Instances of light railways authorised by Act of Parliament will be found in Rother Valley (Light) Railway Act, 1896 (59 & 60 Vict. c. lxxvi.), and Vale of Rheidol (Light) Railway Act, 1897 (60 & 61 Vict. c. clxxiv.).

As to the application of this provision in the case of amending Orders, see sect. 24.

(k) Stress is laid on the safety of the public here, because it is the particular province of the Board of Trade to provide for it. They are assisted, in the case of a Light Railway Order, by the report of one of their inspectors on the proposed line. The provisions for the safety of the public usually inserted in Orders will be found *post*, pp. 563, 567 *sqq.*, 614 *sqq.* See also the Railway Acts usually applied to the light railway by the Order in sect. 11 (b), and the notes thereto.

(l) As to the notice given by the Board of Trade, and as to the necessity of lodging objections in time, see note (g) to sect. 8.

The observations already made, as to the persons who may object and the objections which they may make, in note (y) to sect. 7, and *ante*, p. 45, will apply to objectors and objections before the Board of Trade.

Sect. 9.

There is nothing to limit the objectors appearing or the objections taken before the Board of Trade to those dealt with by the Commissioners. It sometimes happens that objectors reserve their objections altogether till the Order comes before the Board, and objectors who have already appeared before the Commissioners raise fresh objections before the Board. The Light Railways Bill of 1903, however, prohibited this in the case of objections based on sub-sect. 1 (a) above. It seems that promoters have technically no right to appear against their own Order before the Board, as they might wish to do, if clauses had been inserted by the Commissioners to which they objected; but no doubt the Board would usually hear them. (*Cranbrook, Tenterden and Ashford case* (1899), Rep. V. 11; Oxley, 84.)

Before the Board the promoters do not, as in the case of a bill before the second House, commence by proving their preamble. That is taken as proved at the outset, and the objections to it, if any, are heard. These are then met by the promoters. The discussion of clauses then follows.

(m) Compare sect. 8 (1).

(n) For the meaning of this word, see note (o) to sect. 43 of Tramways Act, 1870.

(o) The only cases hitherto in which the Board has rejected an Order as a whole have been cases which fall, in their opinion, under sub-sect. 3. (See note (i) above.)

(p) In the *Llandudno and Colwyn Bay case* (1897), Rep. II. 20; Oxley, 131, the Order was remitted to the Commissioners, since the local authorities complained that they had had no opportunity of objecting to a deviation which had been inserted in the Order after the local inquiry.

(q) See also sect. 15 (1).

10. The Board of Trade may confirm the order with or without modifications as the case may require (r), and an order so confirmed shall have effect as if enacted by Parliament (s), and shall be conclusive evidence that all the requirements of this Act in respect of proceedings required to be taken before the making of the order have been complied with (t).

Confirmation
of order by
Board of
Trade.

(r) The Board almost always modifies the Order to some extent. The following instances of modifications may be given:—As to the incorporation of railway Acts in the Order, the position of a station, the position of the tracks, the protection of gas and water pipes, the substitution of bridges for level crossings, the steepness of gradients permitted on deviations, the limitation of deviations to lands acquired by agreement, the omission of parts of lines autho-

Sect. 10. risen by the Commissioners, the repair and maintenance of roads, the protection of the rights of the Crown, the speed to be run, the power to carry goods, the rates to be charged, the relations with telephone companies, working agreements with local authorities, the time allowed for the acquisition of land and construction, the amount of the capital, the time for the repayment of advances, the substitution of a deposit for a penalty, and the persons empowered to purchase the undertaking.

After it has confirmed an Order the Board duly advertises the fact.

(s) Compare sect. 12 (2).

(t) The effect of these provisions, on the principle of *Chartered Institute of Patent Agents v. Lockwood*, [1894] A. C. 347; 63 L. J. P. C. 74, is that the Order so confirmed is binding on every one, as though it were an Act of Parliament, and that no question can be raised as to its reasonableness or as to the regularity of the proceedings by which it was made, or whether it is *ultra vires* of the persons who made it.

Provisions
which may
be made by
the order.

11. An order under this Act may contain provisions consistent with this Act for all or any of the following purposes—

- (a) the incorporation, subject to such exceptions and variations as may be mentioned in the order, of all or any of the provisions of the Clauses Acts as defined by this Act(*u*). Provided that where it appears to the Board of Trade that variations of the Lands Clauses Acts are required by the special circumstances of the case, the Board of Trade shall make a special report to Parliament on the subject, and that nothing in this section shall authorise any variation of the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement(*x*); and
- (b) the application, if and so far as may be considered necessary, of any of the enactments mentioned in the Second Schedule to this Act (being enactments imposing obligations on railway companies with respect to the safety of the public and other matters)(*y*); and

- (c) giving the necessary powers for constructing (*z*) Sect. 11.
and working (*a*) the railway, including power
to make agreements with railway and other
companies for the purpose (*b*); and
- (d) giving any railway company any power required
for carrying the order into effect (*b*); and
- (e) the constitution as a body corporate of a com-
pany for the purpose of carrying out the
objects of the order (*c*); and
- (f) the representation on the managing body of the
railway of any council who advance, or agree
to advance, any money for the purpose of the
railway (*d*); and
- (g) authorising a council to advance or borrow
money for the purposes of the railway and
limiting the amount to be so advanced or
borrowed, and regulating the terms on which
any money is to be so advanced or bor-
rowed (*e*); and
- (h) the manner in which the profits are to be
divided, where an advance is made by a
council to a light railway company as part
of the share capital of the company (*e*); and
- (i) the proper audit of the accounts of the managing
body of the railway where the managing
body is not a local authority (*f*) and the
time within which the railway must be con-
structed (*g*); and
- (j) fixing the maximum rates and charges for
traffic (*h*); and
- (k) in the case of a new company, requiring the
company to make a deposit, and providing
for the time of making and the application
of the deposit (*i*); and
- (l) empowering any local authority to acquire the
railway (*k*); and
- (m) any other matters, whether similar to the above
or not, which may be considered ancillary to

Sect. 11.

the objects of the order or expedient for carrying those objects into effect (*l*).

(*u*) The *Clauses Acts* are defined in sect. 28 for England and sect. 26 (7) (see also sect. 26 (3)) for Scotland. The incorporation of them is subject also to the variations made in them by sects. 13 (1) and 14 of the present Act. By sect. 12 (1) they do not apply except in so far as the Order incorporates or applies them. The portions of the *Clauses Acts* which are practically always incorporated in Orders for light railways of Class A. and Class B. respectively will be found enumerated *post*, pp. 550, 587. It will be observed that provisions for the compulsory purchase of land are usually not incorporated in Orders of the latter class.

It is very rarely that any variation is found. In *Cranbrook and Tenterden Order*, 1900, Rep. V. 11 (Class A.), a water company is given further protection than that afforded by *Railways Clauses Consolidation Act*, 1845 (8 & 9 Vict. c. 20), ss. 18 to 23. In *Rhyl and Prestatyn Order*, 1900, Rep. V. 44 (Class B.), sects. 112, 113 of the same Act are applied to the extent of allowing a local authority, which has acquired the railway, to lease it. *Kelvedon, Tiptree and Tollesbury Order*, 1901, Rep. II. 7 (Class A.), contains special provisions limiting the application of *Railways Clauses Act*, 1863 (26 & 27 Vict. c. 92), s. 7, which is incorporated as usual. *Wakefield and District Order*, 1901, Rep. VII. 36, incorporates, contrary to the usual practice, sect. 6 of *Railways Clauses Consolidation Act*, 1845.

As to the meaning of exceptions and variations, see note (*p*) to sect. 15 of *Tramways Act*, 1870.

(*x*) The intention of the sub-section is that the Board of Trade should make a special report to Parliament, apparently for the purpose merely of calling Parliament's attention to the matter, wherever it thinks it necessary to make variations of the *Lands Clauses Acts* (this does not include exceptions of portions of those Acts) in a Light Railway Order. But such variations can only be of a limited nature, as it is provided that the compulsory-purchase sections of the *Lands Clauses Acts* shall not be varied by the Board. The words, however, are "nothing in this section" shall authorise any such variation, and therefore do not affect the variation of the compulsory-purchase sections effected by sects. 13 (1) and 14 of the present Act. The effect of the present sub-section, then, is to forbid the Board to vary the compulsory-purchase sections as varied by sects. 13 (1) and 14. Thus the Commissioners have refused to apply the compulsory-purchase sections of the *Lands Clauses Acts* without the variation in them imposed by sect. 13 (1) (*Kelvedon, Coggeshall and Halstead case* (1898), Rep. IV. 13; Oxley, 70; *Gosforth and Ponteland case* (1899), Rep. V. 20; Oxley, 95), though they do not object so to apply them, where they are to be used for the purpose of fixing the price of land to be taken by agreement

and not for compulsory purchase. (*Mid-Suffolk Order*, 1900, Rep. VI. 26; *Oakington and Cottenham Order*, 1901, Rep. VI. 29.) Sect. 11.

They have also refused to apply them without such variation for the purpose of valuing minerals. (*Brackenhill case* (1899—1900), Rep. VI. 8, VII. 5; Oxley, 99.)

The provisions of this sub-section have also led the Commissioners to refuse to relieve promoters from Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 16 (*Penzance, Newlyn and West Cornwall case* (1899), Rep. V. 36; Oxley, 78), or sect. 92 (*Southend-on-Sea and District case* (1899), Rep. V. 38; Oxley, 189; *Nuneaton and District case* (1900), Rep. VI. 28; Oxley, 247).

With regard to compensation generally, the Commissioners have refused to order compensation to be paid for the use of highways by a light railway (*Flamborough and Bridlington case* (1897), Rep. I. 7; Oxley, 126; *Hastings, Bexhill and District case* (1899), Rep. V. 22; Oxley, 227), or for the interference with the herbage on roadside wastes (*Flamborough and Bridlington case, ub. sup.*), and have refused to allow brackets to be compulsorily fixed to houses on payment of compensation. (*Id. ib.*)

Where road widenings were necessary, but the compulsory powers necessary for acquiring land for the purpose had not been asked for, the Commissioners refused to deal with the schemes. (*London County cases* (1900), Rep. VII. 22—24.)

(y) The enactments mentioned in the Second Schedule only apply so far as the Order incorporates or applies them. (Sect. 12 (1).) Those which are usually applied by the Order are, in the case of a light railway of Class A., Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 19 (proceedings where an engine fails to consume its own smoke), Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), except sect. 1, sub-sects. (a) and (b) (block system and interlocking), and sect. 4 (returns of overtime); in the case of a light railway of Class B., Regulation of Railways Act, 1889, ss. 5 and 6 (penalties for avoiding payment of fare, and provision that the fare shall be printed on every passenger ticket). (See the model clauses, *post*, pp. 551, 588.)

In *Crowland and District Order*, 1898, Rep. II. 10, and *Corryingham Order*, 1899, Rep. V. 10 (both authorising light railways of Class A.), sect. 1 (c) of Regulation of Railways Act, 1889, is omitted and replaced by clauses enabling the Board of Trade at any time to order the company to provide and use continuous brakes.

Special provisions with regard to cheap trains will be found in *Oakington and Cottenham Order*, 1901, Rep. VI. 29.

[In the following notes the most important variations of, and departures from, the model clauses printed *post*, pp. 548, 586, have been noted :—]

(z) A. *Lands*.

For the Clauses Acts and compulsory purchase, see notes (u) and (x), above.

Sect. 11. The usual clauses providing for the acquisition of lands by the company will be found *post*, pp. 554, 592. As to the time limited for the purchase of lands, see note (g) below.

Where it is proposed to lay a light railway on a "roadside waste," nice questions may arise as to the ownership both of the herbage (*Curtis v. Kesteven County Council* (1890), 45 Ch. D. 504; 60 L. J. Ch. 103) and of the soil of such wastes. (*Neeld v. Hendon Urban District Council* (1899), 81 L. T. 405; *Countess of Belmore v. Kent County Council*, [1901] 1 Ch. 873; 70 L. J. Ch. 501; *Harvey v. Truro Rural District Council* (1903), W. N. 126; 19 T. L. R. 576.) As to interference with footpaths on such a waste, see *Kidderminster and Bewdley Order*, 1901, Rep. VIII. 10.

Where, as is often the case, powers of compulsory purchase are not given in the case of light railways of Class B., the land which the promoters may acquire by agreement is limited to either five or ten acres.

B. Works.

For the usual clauses as to the construction of works, see *post*, pp. 556, 592. As to the time for completion, see sub-sect. (j) and note (g), below.

I. Light Railways of Class A.

Rails.—The weight of rails allowed ranges from as low as 35 lbs. to as high as 85 lbs. per yard. 56 or 60 lbs. per yard are the most common weights. For the corresponding loads permitted, see note (a) below.

Sometimes provision has been made for the substitution of heavier rails for lighter. (*West Highland Railway (Loch Fyne) Order*, 1898, Rep. II. 28; *Bury and Diss Order*, 1901, Rep. VII. 29, VIII. 13.) In the *Derby and Ashbourne* case (1897-8), Rep. II. 4, IV. 7; Oxley, 122, where the railway, though of Class B., was intended to serve the purposes of a railway of Class A., an immense amount of interesting discussion took place as to the form of rails which it was best to adopt; and the results are embodied in *Derby and Ashbourne Order*, 1901. Special modes of construction are prescribed in *Nuneaton and District Order*, 1901, Rep. VI. 28. For permission to use second-hand rails, see *Wrington Vale Order*, 1898, Rep. I. 15.

Radii of curves.—Sometimes in the case of railways of very narrow gauge it has been provided that these shall not be reduced below three chains without the consent of the Board of Trade. (*Welshpool and Llanfair Order*, 1899, Rep. II. 23; *North Wales Narrow Gauge Railways (Beddgelert Light Railway Extension) Order*, 1900, Rep. V. 43.) The limit is four and a half chains in *Nidd Valley Order*, 1901, Rep. VIII. 14, with power to the Board of Trade to approve further reductions. In *Blackpool and Garstang Order*, 1901, Rep. VII. 3, for an electric railway of standard gauge, the limit is one chain. The provision with regard to a check-rail is varied accordingly.

Gradients.—In the Welshpool and North Wales Orders mentioned above, increases of gradients beyond 1 in 30 and 1 in 40 respectively are prohibited; 1 in 40 is also fixed as the limit in *Penzance, Newlyn and West Cornwall Order*, 1899, Rep. V. 36, and *Nidd Valley Order*, 1901, Rep. VIII. 14; and 1 in 30 for part of the line in *Wrington Vale Order*, 1898, Rep. I. 15. Sect. 11.

Deviation.—See *ante*, p. 471.

Gauge.—Usually 4 ft. 8½ in.; but a railway has been authorised with a gauge as narrow as 1 ft. 11½ in. (*North Wales Narrow Gauge Railways (Beddgelert Light Railway Extension) Order*, 1900, *ub. sup.*)

Motive power.—Sometimes steam or electricity is definitely ordered, without any power to alter with the consent of the Board of Trade (*e.g.*, *Wales and Llaughton Order*, 1901, Rep. VIII. 19). By *Blackpool and Garstang Order*, 1901, Rep. VII. 3, the Board of Trade shall not sanction power other than electricity without giving an opportunity to the Corporation of Blackpool to make representations.

Fencing.—Cases where the company's statutory obligation to fence the line has been modified will be found in *Caledonian Railway (Leadhills and Wanlockhead) Order*, 1899, Rep. I. 26; *Fraserburgh and St. Combs Order*, 1899, Rep. II. 25; and *West Highland Railway (Loch Fyne) Order*, 1898, Rep. II. 28. It was cancelled in *West Manchester Order*, 1899, Rep. II. 19. The use of barbed wire is forbidden at certain places by *East Sussex Order*, 1901, Rep. VII. 17; and *Rother Valley (Extension) Order*, 1902, Rep. X. 15.

Junctions with existing railways.—See sect. 23, and notes thereto.

Bridges.—Special regulations for the management of a swing-bridge during and after construction will be found in *Isle of Axholme Order*, 1899, Rep. III. 13.

Ferries were authorised in the *Southend (and District), Bradwell-on-Sea and Colchester case* (1902), Rep. (1903) XI. 33.

Flood openings are provided for by *East Sussex Order*, 1901, Rep. VII. 17.

Proper access to the shore is ordered by *Cromarty and Dingwall Order*, 1902, Rep. I. 21.

Repairs.—The Commissioners are unwilling to impose greater obligations on the company than those which are contained in the model clauses.

Removal of rails over level crossings in the event of discontinuance.—See *Wotton-under-Edge Order*, 1900, Rep. VII. 42.

Sewers and drains, &c.—Clauses specially protecting the sewers and drains of sanitary authorities will be found in *Blackpool and Garstang Order*, 1901, Rep. VII. 3; and see Model Order, sect. 27 (d), *post*, p. 564.

Arbitration.—A special clause will be found in *Crowland and*

Sect. 11. *District Order*, 1898, Rep. II. 10 (as between the company and a railway company).

Shelter at stopping-places.—The exemption of the company from the provision of such shelter is not inserted in *East and West Yorkshire Union Order*, 1901, Rep. VII. 16, where the new railway was to form part of an existing railway, and was promoted by an existing railway company.

Protective clauses.—See *post*, p. 494.

II. *Light Railways of Class B.*

Gauge.—The gauge is usually 3 ft. 6 in. or 4 ft. 8½ in. (subject to alteration with the consent of the Board of Trade); but lines of 4 ft. 6 in., 4 ft., 3 ft. and 2 ft. 6 in. gauge have been sanctioned.

Motive power.—Sometimes it is provided that animal power shall only be used in cases of emergency (*Wakefield and District Order*, 1901, Rep. VII. 36); sometimes the consent of local and road authorities is not required to the use of animal power. (*Halesowen Order*, 1901, Rep. IX. 9; *Blackburn, Whalley and Padiham Order*, 1901, Rep. VIII. 3.)

Waiting-rooms.—In some cases the company is required to provide a waiting-room in the district of any local authority on the route which requires it, and in the position required by them (*Potteries Order*, 1898, Rep. I. 13; *Barnsley and District Order*, 1900, Rep. V. 3); or in a particular district. (*Wakefield and District Order*, 1901, Rep. VII. 36.)

Construction of lines.—*Nuneaton and District Order*, 1901, Rep. VI. 28, contains three detailed schedules and provisions dealing with the method of construction of three sections of the railway for the protection of certain local authorities.

Deviations.—Deviation clauses as to railways of a mixed type will be found in *Kinver Order*, 1899, Rep. III. 14; and *Portsdown and Horndean Order*, 1899, Rep. IV. 10.

Widening of streets.—*South Staffordshire Order*, 1900, Rep. V. 39, contains special provisions for the purchase of land for this purpose by the local authority and their partial recoupment by the company.

Paving.—A company has, under special circumstances, been ordered to pave a greater width of street than is required by the model clause (*Redditch and District Order*, 1900, Rep. IV. 25), and to pave the road in front of certain public buildings with wood (*Middleton Order*, 1899, Rep. III. 17), and to pave certain roads with certain materials. (*Aldershot and Farnborough Order*, 1902, Rep. V. 1.)

Crossing a railway on the level.—This has been prohibited. (*Doncaster Corporation Order*, 1900, Rep. V. 15.) See also p. 19, *ante*.

Superintendence of works.—A county council, which was not the road authority, has been given the power to approve the plans for works and superintend the works on a road, to the repair of

which they contributed. (*London United Tramways Order*, 1899, Rep. IV. 17; *Mansfield and District Order*, 1901, Rep. VII. 28.) Road authorities have been authorised to require the employment of night shifts of workmen. (*Chatham and District Order*, 1899, Rep. III. 22, IV. 26.) Their consent has been made requisite to the construction of crossings and passing-places, even when shown on the plans. (*Portsmouth and Horndean Order*, 1899, Rep. IV. 10; *Aldershot and Farnborough Order*, 1902, Rep. V. 1.) A special clause as to the amount of road which the company might break up at one time will be found in *Derby and Ashbourne Order*, 1901, Rep. II. 4, IV. 7.*

Subsidence.—*Derby and Ashbourne Order*, 1901, Rep. II. 4, IV. 7, contains a provision exempting local and road authorities from liability for subsidence due to the laying of pipes or apparatus.

Repairs.—An agreement between a company and a local authority for the maintenance and repair of roads is made binding by *Colne and Trauden Order*, 1901, Rep. V. 31.

Protection of pipes, &c.—Special clauses for the protection of large water mains will be found in *Liverpool and Prescot Order*, 1899, Rep. IV. 14. The Commissioners have refused to provide specially for the breaking up of a light railway by an electric company. (*South Staffordshire case* (1899), Rep. V. 39; Oxley, 200.) A provision for the relaying by the company of pipes brought by their works within a certain distance of the surface will be found in *Spenn Valley Order*, 1901, Rep. V. 40.

(a) See the model clauses, *post*, pp. 567, 610.

I. *Light Railways of Class A.*

Load.—The amount of load permitted to be brought upon the rails by any one pair of wheels varies according to the weight of the rails authorised as follows:—

Weight of Rails per Yard.	Load.
35 lbs.	6 tons
41½ lbs.	8 tons
56 lbs.	12 tons
60 lbs.	14 tons
70 lbs.	16 tons
85 lbs.	No limit.

Where provision has been made for the substitution of heavier rails for lighter, the load is permitted to be increased in proportion. (*West Highland Railway (Loch Fyne) Order*, 1898, Rep. II. 28; *Bury and Diss Order*, 1901, Rep. VII. 29, VIII. 13.)

Speed.—The maximum speed is fixed at fifteen miles per hour in *West Manchester Order*, 1899, Rep. II. 19; at eighteen miles per hour in *North Wales Narrow Gauge Railways (Beddgelert Light Railway Extension) Order*, 1900, Rep. V. 43; and at twenty miles

Sect. 11.

per hour in *Callington Order*, 1900, Rep. V. 4. In the *Beddgelert Order* the speed is limited to fifteen miles per hour on gradients of less than 1 in 50, and to ten miles per hour on curves of less than 5 chains radius. Ten miles per hour is fixed on curves of less than $4\frac{1}{2}$ chains radius in *Blackpool and Garstang Order*, 1901, Rep. VII. 3, and five miles per hour on curves of less than 5 chains radius in *Nidd Valley Order*, 1901, Rep. VIII. 14. In *Kelvedon, Tiptree and Tollesbury Order*, 1901, Rep. II. 7, the distance from a level crossing at which speed was to be reduced is fixed at 200 yards.

Passenger traffic.—*Wales and Loughton Order*, 1901, Rep. VIII. 19, provides that, after the opening of the railway for other than passenger traffic, the Board of Trade may, on the application of one of the local authorities concerned, require it to be opened for passenger traffic.

II. Light Railways of Class B.

Supply of electricity.—By *Loughborough and District Order*, 1901, Rep. VII. 26, if the local authority are authorised to supply electricity, the promoters are to take it from them for the working of the railway at a price and under conditions to be settled by agreement or arbitration.

Carriages and engines.—For the scale of width permitted by the Board of Trade according to gauge, see note (i) to sect. 25 of *Tramways Act*, 1870. The width is fixed at 6 ft. 4 in. in *Redditch and District Order*, 1900, Rep. IV. 25, and, under exceptional circumstances, at 9 ft. in *Derby and Ashbourne Order*, 1901, Rep. II. 4, IV. 7.

Use of railway by local authorities for certain purposes.—Subject, as to part of the railways, to the consent of a railway company in *Aldershot and Farnborough Order*, 1902, Rep. V. 1.

Stopping-places.—Clauses limiting the stopping of cars at certain points will be found in *Isle of Thanet (Extensions) Order*, 1900, Rep. V. 25; in particular in the vicinity of railway stations (*Mansfield and District Order*, 1901, Rep. VII. 28; *Sheerness and District Order*, 1901, Rep. VIII. 16).

Passenger traffic.—*Redditch and District Order*, 1900, Rep. IV. 25, provides for third-class accommodation on every carriage or train. Passenger traffic has been prohibited on part of a light railway. (*East and West Yorkshire Union Order*, 1901, Rep. VII. 16.)

Goods traffic.—*London United Tramways Order*, 1899, Rep. IV. 17, contains a special power for a county council to make by-laws as to heavy goods traffic; and *Llandudno and Colwyn Bay Order*, 1899, Rep. II. 20, provides that such traffic, or offensive or dangerous traffic, shall not be conducted without the consent of the local authorities, with provision for arbitration on the question whether such consent has been unreasonably withheld. Special limitations on the carrying of goods between certain points will be found in

Sect. 11.

Bradford and Leeds Order, 1900, Rep. III. 3; and limitation of the user of a portion of the railways to the passage of carriages to and from the depôts at certain hours in *Kidderminster and Bewdley Order*, 1901, Rep. VIII. 10. By *Wakefield and District Order*, 1901, Rep. VII. 36, certain goods are not to be carried in competition with certain railways, and differences are to be referred to the Railway Commissioners under Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 8.

By-laws.—The power of making by-laws, which is generally given to the local authorities, is often given to the road authorities (as in *Bromsgrove Order*, 1900, Rep. VI. 10), particularly when the promoters are a local authority. (*Durham and District Order*, 1901, Rep. VIII. 6; *Mitcham Order*, 1901, Rep. IX. 16.) Sometimes it is given to the county council. (*London United Tramways Order*, 1899, Rep. IV. 17; *Wigan Order*, 1902, Rep. VII. 39.) In *Aldershot and Farnborough Order*, 1902, Rep. V. 1, it is given to the county council, except as to the hours for the conveyance of traffic other than passenger traffic, in respect of which it is given to the various local authorities.

Workmen's trains.—*Durham and District Order*, 1901, Rep. VIII. 6, omits the separate provision as to Saturday trains.

Lights.—Special provisions are to be found in *Derby and Ashbourne Order*, 1901, Rep. II. 4, IV. 7, and in *Aldershot and Farnborough Order*, 1902, Rep. V. 1.

Opening for traffic.—*Loughborough and District Order*, 1901, Rep. VII. 26, forbids the opening of any part of the lines until a particular portion is opened.

Discontinuance.—For a provision that the working of a certain part of a system should not be discontinued without the discontinuance of the working of the whole, see *Isle of Thanet Order*, 1899, Rep. I. 10.

(b) It will be observed that power may be given to make agreements with "railway and other companies," but power required to carry the Order into effect may only be given to any "railway company." *Quære*, whether this confers jurisdiction to enlarge, for the purposes of agreements made under the provisions of an Order, the statutory powers of anything but a railway company, such as a tramway company. "Railway company," however, no doubt includes a light railway company. *Quære*, also, whether "railway and other companies" can include local authorities who are working tramways or light railways. Apparently it does not. Neither are the general words of sub-sect. (m) sufficient, it would seem, to cure the difficulties just mentioned. These difficulties, however, have not been raised in practice.

I. *Light Railways of Class A.*

Working Agreements with railway companies.—The usual clauses will be found *post*, pp. 568, 569. The Commissioners will not, it

Sect. 11. seems, insert a general power to make agreements with railway companies other than those which are specially named in the Order. (*North Lincolnshire case* (1899), Rep. V. 32; Oxley, 80.) It will be remembered that the construction and working of the proposed light railway by an existing railway company is a condition precedent to a Treasury grant under sect. 5. *Wrrington Vale Order*, 1898, Rep. I. 15, and *Kelvedon, Tiptree and Tollesbury Order*, 1901, Rep. II. 7, were granted to the railway company, which had undertaken to construct and work the line, in lieu of the original promoters.

Running powers.—Powers granted to light railways to run, by agreement (but not otherwise), over other railways will be found in *Gower Order*, 1899, Rep. I. 16; *Tanat Valley Order*, 1899, Rep. II. 22; *Essington and Ashmore Order*, 1900, Rep. V. 18.

An application by other railways to run over a proposed light railway was refused in the *Isle of Axholme case* (1899), Rep. III. 13; Oxley, 55.

Subscriptions.—Sometimes a railway company is given power to subscribe to the capital. (See *post*, p. 576.)

II. *Light Railways of Class B.*

See the model clauses as to running powers and working agreements between promoters and owners of tramways, *post*, p. 612.

Compulsory running powers will apparently not be granted.

For the user and working of a line to be constructed and worked jointly under a Tramway Order and a Light Railway Order, see *Spenn Valley Order*, 1901, Rep. V. 40.

(c) The model clauses incorporating a company are printed *post*, p. 552.

In the *Redditch and District case* (1898), Rep. IV. 25; Oxley, 185, a company registered under the Companies Acts was formed before the local inquiry to procure and take over the Order, but the Commissioners insisted on incorporating a fresh company for the purposes of the Order. Compare *Nuneaton and District Order*, 1901, Rep. VI. 28. But Orders are frequently granted to existing companies. In the case of a Scots company, which is authorised to construct a railway in more than one county, the Order fixes its domicile in one of the counties. (*Cromarty and Dingwall Order*, 1902, Rep. I. 21.)

The qualification of directors is usually fixed at 250*l.* in shares; but it is fixed, for instance, at 150*l.* in *Tanat Valley Order*, 1899, Rep. II. 22; at 200*l.* in *Bury and Diss Order*, 1901, Rep. VII. 29, VIII. 13; and at 500*l.* in *Wales and Laughton Order*, 1901, Rep. VIII. 19.

Capital.—See the model clauses, *post*, pp. 575, 620. For a power to raise additional capital, see *Padstow, Bedruthan and Mawgan Order*, 1903, Rep. (1903) XII. 16.

It will be observed that, in the case of a light railway of Class B.,

the company is forbidden to create debenture stock, and Part III. of Companies Clauses Consolidation Act, 1863, is not incorporated. The reason, no doubt, is that the railway is liable to compulsory purchase at the end of a stated period. (See note (k) below.) For the same reason mortgages of the undertaking are to be deemed to comprise the purchase-money paid for it on compulsory sale. The power to borrow is usually limited to one-third of the amount of the capital.

Appropriate clauses as to capital and the incorporation of statutory provisions relating thereto, where the promoters are an existing railway company and the proposed railway is to be part of their system, will be found in *East and West Yorkshire Union Order*, 1901, Rep. VII. 16, and *Southwold Order*, 1902, Rep. VIII. 17.

(d) "Managing body" is used in sub-sect. (i) to mean the promoters, company or local authority who manage the railway. Here it must mean the promoters or, in the case of a company, the board of directors. A model clause providing for such representation will be found *post*, p. 553. The number of representatives will depend on circumstances, particularly the total number on the board, the amount of the capital, and the amount of the advance.

As to advances by councils, see sect. 3 and notes thereto.

(e) See the clauses and schedule, *post*, pp. 579, 627, 635. A specimen of the appropriate clauses where the promoters are a county council will be found in *County of Middlesex Order*, 1901, Rep. VI. 11, VII. 14.

As to advances by councils, see sect. 3; and as to the borrowing of money and replacement of money borrowed by them for the purposes of a light railway, see sect. 16; see also the notes to these sections.

As to the application of profits made by a council, see sect. 16 (5).

In *Lauder Order*, 1898, Rep. I. 25, the advance is ordered to be made as part of the share capital only. Elaborate provisions for advances by a county council and two corporations will be found in *Cromarty and Dingwall Order*, 1902, Rep. I. 21.

(f) The Orders for Light Railways of Class B. provide for the transmission to the Board of Trade of such accounts as they require (*post*, p. 631).

For the audit of receipts and payments in respect of a council's advances, see *post*, p. 580; and for the audit of the accounts of a joint committee, see Sched. III. (f) of this Act.

(g) See the model clauses, *post*, pp. 556, 592.

For railways of Class A., the time for the compulsory purchase of lands is usually limited to three years, and for completion to five years. It is usually provided that the period for completion (but not for compulsory purchase) may be extended by the Board of Trade. Where application is to be made to the Board of Trade for an extension of time by virtue of the Order, the application is duly

Sect. 11. advertised in the London or Edinburgh Gazette and locally, and a date is fixed by the advertisement before which all objections are to be sent to the Assistant Secretary of the Railway Department.

In *Gower Order*, 1899, Rep. I. 16, and *East and West Yorkshire Union Order*, 1901, Rep. VII. 16, the periods are two and three years respectively.

Blackpool and Garstang Order, 1901, Rep. VII. 3, gives power to the Board of Trade to extend the period for completion as to part of the railway only, and to direct the powers of the company to cease as regards some portion.

For railways of Class B. the time for completion is usually three years, capable of extension with the consent of the Board of Trade. The time for the compulsory purchase of lands, where powers for that purpose are granted, is usually two, but sometimes three years, as in *Nuneaton and District Order*, 1901, Rep. VI. 28.

As to applications for amending Orders for the purpose of extension of time, see sect. 24 and notes thereto.

(h) As to the rates on light railways of Class A., see the clauses *post*, p. 574. The clause by which the company is empowered to charge goods rates higher by 25 per cent. than those of an adjoining railway is not applied where the light railway is being worked by such railway. In such a case the company is empowered to charge for five years rates 25 per cent. above their corresponding statutory rates, and the Board of Trade may then reduce such rates, but not so as to lower them below the corresponding maximum statutory rates. (*Bentley and Bordon Order*, 1902, Rep. XI. 21.)

For the rates on light railways of Class B., see clauses and schedule, *post*, pp. 618, 633; and compare Tramways Act, 1870, s. 45, and notes thereto.

Portsdown and Horndean Order, 1899, Rep. IV. 10, permits the company to charge a minimum rate for animals and goods as for three miles.

Middleton Order, 1899, Rep. III. 17, empowers the company, by agreement with any local authority, to arrange stages of one mile for passengers at a rate not exceeding one penny per stage. In *Chatham and District Order*, 1899, Rep. III. 22, IV. 26, the rates are one penny for the first mile or part of a mile and one halfpenny for every subsequent half-mile or part of a half-mile. In *Poole and District Order*, 1899, Rep. IV. 24, the provision for a charge of twopence for distances between half a mile and two miles is omitted.

By *Colne and Trawden Order*, 1901, Rep. V. 31, the company are permitted to charge maximum rates 50 per cent. higher than the ordinary maximum for goods traffic, over a particular portion of their lines.

It is to be observed that passenger fares are usually required to be exhibited inside the carriages only. Contrast Tramways Act,

1870, s. 45, and see notes thereto. But in *Spenn Valley Order*, 1901, Rep. V. 40, they are required to be exhibited both inside and outside. Sect. 11.

(i) See the model clauses, *post*, p. 581, and compare Tramways Act, 1870, s. 12, and Parliamentary Deposits and Bonds Act, 1892, and notes thereto.

“New company” has its natural sense here, and means a company created by the Order. Where the persons to whom the Order is granted are not a new company or a local authority, a penalty is enacted in lieu of a deposit being required (see clauses, *post*, p. 565). No penalty or deposit clauses are inserted in the Order when it is granted to a local authority. But in other cases either a penalty or a deposit is insisted on. (*Dornoch case* (1897), Rep. I. 28; Oxley, 6; *Cranbrook, Tenterden and Ashford case* (1899), Rep. V. 11; Oxley, 84; *Bourne Valley case* (1899), Rep. VI. 7; Oxley, 100.) It would seem, however, that the present sub-section would not cover a case where the promoters were individuals, and were not incorporated by the Order.

(k) Powers of compulsory purchase may not be conferred by an amending Order (sect. 24 (c)).

The model clauses will be found *post*, pp. 623 *sqq.* It will be observed that there are clauses for the lease of the undertaking when purchased by the local authority, but there is no restraint on the working of the railway by a local authority as there is in Tramways Act, 1870, s. 19. There is also a provision for a sale by agreement, with the consent of the Board of Trade, at any time, and for a purchase by a local authority in the event of discontinuance and insolvency on the terms contained in Tramways Act, 1870, s. 43. See, generally, that section and the notes thereto. These clauses have hitherto only been inserted in Orders authorising light railways of Class B.

Purchasing authorities.—The words “any local authority” are wide enough to cover every local authority of whatever nature, and are not limited to the local authorities empowered to purchase under Tramways Act, 1870, or to the councils mentioned in the present Act.

The Order usually provides (where the Order has not been granted to a local authority) for compulsory purchase by the local authorities of the various districts in which the railway is situate, but, unlike Tramways Act, 1870, provides that they must all purchase simultaneously.

Sometimes this is varied by giving a borough authority and a county council power to purchase (*Cheltenham and District Order*, 1900, Rep. V. 7; *Kidderminster and Bewdley Order*, 1901, Rep. VIII. 10), or an urban district council and a county council. (*Bromsgrove Order*, 1900, Rep. VI. 10.)

Again, more or less elaborate provisions are sometimes inserted

Sect. 11. for empowering one or more of the local authorities on the route to purchase, if other local authorities neglect or refuse to purchase. (*Wakefield and District Order*, 1901, Rep. VII. 36; *Mansfield and District Order*, 1901, Rep. VII. 28; *Sheerness and District Order*, 1901, Rep. VIII. 16; *Blackburn, Whalley and Padiham Order*, 1901, Rep. VIII. 3.) The last-mentioned Order confers on a corporation an immediate power to purchase the lines within a certain area added to a borough, if the borough should be so extended.

The clause providing for purchase by agreement is sometimes similarly varied. (*Blackburn, Whalley and Padiham Order*, 1901, Rep. VIII. 3; *Bradford and Leeds Order*, 1900, Rep. III. 3.) In *Ormskirk and Southport Order*, 1901, Rep. VI. 30, a first option to purchase was given to an existing railway company, subject to a prior option which was to accrue to a local authority in certain events. In *Blackburn, Whalley and Padiham Order*, 1901, Rep. VIII. 3, a railway company was given an option to purchase before anyone but local authorities. In Orders granted to district councils a provision is often inserted for sale to the county council. (See *post*, p. 625, and *Mitcham Order*, 1901, Rep. IX. 16.)

Time of purchase.—This varies with the special circumstances of each case, in particular the rapidity with which promoters may expect a return for their capital outlay and exertions. The following periods have been fixed:—21, 25, 27, 28, 30, 32, 35, 40 and 42 years.

The power to purchase may also be exercised generally at the end of every seven years, or sometimes, in the case of the longer periods, every ten years after the period named. The subsequent periods have, however, been ten years in two cases where the original periods were only 28 and 32 years respectively.

Middleton Order, 1899, Rep. III. 17, gives power to a particular local authority to purchase a part of the proposed line before the prescribed period in certain events and upon special terms. In *Worcester and District Order*, 1901, Rep. VI. 38, the time of purchase is different for different local authorities.

Terms of purchase.—The model clause, which provides for payment of the fair market value of the undertaking as a going concern, but without any allowance for compulsory purchase, is often modified. Thus, by *Nuneaton and District Order*, 1901, Rep. VI. 28, there is to be no allowance for goodwill or prospective value. By *Mansfield and District Order*, 1901, Rep. VII. 28, the price is not to exceed the actual and proper capital expenditure of the company plus 10 per cent. In *Llandudno and Colwyn Bay Order*, 1899, Rep. II. 20, the terms were by agreement fixed at those specified by Tramways Act, 1870, s. 43, and in *Isle of Thanet Order*, 1899, Rep. I. 10, those terms are adopted, plus a payment of 25 per cent. on the sum when so ascertained. In *Worcester and District Order*, 1901, Rep. VI. 38, the terms of purchase are dif-

ferent for different local authorities. The very special terms of *Middleton Order*, 1899, have been referred to above. Sect. 11.

Payment of purchase-money.—*Morley and District Order*, 1901, Rep. VII. 30, extends the period for repayment provided in *Tramways Act*, 1870, s. 20, to 40 years.

Lease of railways.—See model clause, *post*, p. 627. By *Mitcham Order*, 1901, Rep. IX. 16, the promoters are to give the county council three months' notice of their intention to let.

(I) Under this head come the various clauses which are inserted for the protection of local authorities, companies and individuals (see below and the model Orders, *post*, pp. 555, 561 *sqq.*, 603 *sqq.*), and the incorporation from time to time of statutes which are not enumerated in the Act. Among the latter may be mentioned *Harbours, Docks and Piers Clauses Act*, 1847 (10 & 11 Vict. c. 27), the bulk of which is applied by *West Highland Railway (Loch Fyne) Order*, 1898, Rep. II. 28, which also contains a schedule of pier dues.

Special powers, which have been conferred by Orders under this section, include power to construct a road on lands acquired for the purpose (*Goole and Marshland Order*, 1899, Rep. II. 6), and to acquire an existing private tramway (*West Manchester Order*, 1899, Rep. II. 19). But the Commissioners have held that they could not authorise the sale and transfer of a line which had obtained Parliamentary sanction. (*Portmadoc, Beddgelert and Snowdon case* (1898), Rep. IV. 31.) Some rather remarkable provisions authorising a local authority to expend capital on adapting a bridge to the purposes of the light railway, and to take tolls thereon till the money borrowed for the purpose was repaid, will be found in *North Holderness Order*, 1891, Rep. II. 12.

Clauses providing for payment by the National Telephone Company of a reasonable sum for wayleaves will be found in *Llandudno and Colwyn Bay Order*, 1899, Rep. II. 20; *Glasgow and South Western Railway (Maidens and Dumure) Order*, 1899, Rep. IV. 33; *Penzance, Newlyn and West Cornwall Order*, 1899, Rep. V. 36; and *Blackpool and Garstang Order*, 1901, Rep. VII. 3.

The Commissioners and the Board of Trade will not insert clauses, which have been agreed between promoters and objectors, merely because of such agreement, if such clauses are not consonant with their own ordinary practice. (*Dundee and Broughty Ferry case* (1898), Rep. IV. 32; *Oxley*, 176; *Worcester and District case* (1900), Rep. VI. 38; *Oxley*, 240.)

But *Colne and Trawden Order*, 1901, Rep. V. 31, recites an agreement whereby an opposing scheme was withdrawn.

See also note (d) to sect. 1 as to matters which have been held to be outside the jurisdiction of the Commissioners and the Board of Trade.

Sect. 11.

Protective clauses, various.—For an aqueduct, *Cleobury Mortimer and Ditton Priors Order*, 1901, Rep. VIII. 4; a reservoir, *Nidd Valley Order*, 1901, Rep. VIII. 14; a water company, *County of Middlesex Order*, 1901, Rep. VI. 11, VII. 14; a water board, *Blackpool and Garstang Order*, 1901, Rep. VII. 3; a canal, *post*, p. 603; *Welshpool and Llanfair Order*, 1899, Rep. II. 23; *Nuneaton and District Order*, 1901, Rep. VI. 28; *Wakefield and District Order*, 1901, Rep. VII. 36; tramways, *post*, p. 605; *Spenn Valley Order*, 1901, Rep. V. 40; special drainage commissioners, *Bridgewater, Stowey and Stogursey Order*, 1901, Rep. VII. 6; river improvement commissioners, *Jarrow and South Shields Order*, 1901, Rep. VIII. 9; owners of private mineral lines, *id. ib.*

Application
of general
Railway
Acts.

12.—(1.) The Clauses Acts, as defined by this Act (*m*), and the enactments mentioned in the Second Schedule to this Act (*n*), shall not apply to a light railway authorised under this Act except so far as they are incorporated or applied by the order authorising the railway.

(2.) Subject to the foregoing provisions of this Act (*o*) and to any special provisions contained in the order authorising the railway (*p*), the general enactments relating to railways (*q*) shall apply to a light railway under this Act in like manner as they apply to any other railway; and for the purposes of those enactments, and of the Clauses Acts so far as they are incorporated or applied by the order authorising the railway, the light railway company (*r*) shall be deemed a railway company, and the order under this Act a special Act, and any provision thereof a special enactment. Provided that a light railway shall not be deemed to be a railway within the meaning of the Railway Passenger Duty Act, 1842, and that no duties shall hereafter be levied in respect of passengers conveyed on a light railway constructed under this Act in respect of the conveyance of such passengers upon such railway (*s*).

5 & 6 Vict.
c. 79.

(*m*) By sect. 28 for England, and by sect. 26 (7) (see also sect. 26 (3)) for Scotland. The questions arising on the Clauses Acts are discussed in notes (*u*) and (*x*) to sect. 11. See also the model clauses, *post*, pp. 550, 587.

(*n*) As to these, see note (*y*) to sect. 11, and model clauses, *post*, **Sect. 12.**
pp. 551, 588.

(*o*) Sects. 11 and 12 (1).

(*p*) The usual provisions inserted in Orders have, of course, the effect of modifying or preventing the application of the general railway enactments. Beside these, it is usual in Orders authorising light railways of Class B. to provide that the following enactments shall not apply:—Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), ss. 3 and 4 [relating to returns to be made to the Board of Trade; these sections were repealed except so much of them as relates to a table of tolls by Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78), s. 17, and Sched. II.]; Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), ss. 3 to 13 inclusive (as to accounts, audit, &c.), and s. 34 (as to printed copies of shareholders' address book); and Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78), ss. 9 and 10 (as to returns of statistics).

(*q*) See also *ante*, p. 88.

The following list may be usefully given of those enactments which relate in express terms to railways.

Those Acts or portions of Acts, however, which are enumerated in Sched. II. to this Act, will only apply if they are specially applied by the Order. See also note (*p*) as to certain exclusions in the case of light railways of Class B.

It will also be observed that the present section excludes the application of Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79).

I. Enactments extending both to England and Scotland.

A. Railway and Canal Traffic Acts, 1854 to 1894. (See Short Titles Act, 1896 (59 & 60 Vict. c. 14).)

Including Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31);
Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48);
Board of Trade Arbitrations Act, 1874 (37 & 38 Vict.
c. 40), Part II.;

Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25);
Railway and Canal Traffic Act, 1892 (55 & 56 Vict. c. 44);

and

Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54).

Add Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 & 55 Vict. c. 12).

B. Railway Regulation Acts, 1840 to 1895. (See Short Titles Act, 1896.)

Including Railway Regulation Act, 1840 (3 & 4 Vict. c. 97);
Railway Regulation Act, 1842 (5 & 6 Vict. c. 55);
Railway Regulation Act, 1844 (7 & 8 Vict. c. 85);
Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119);
Regulation of Railways Act, 1871 (34 & 35 Vict. c. 78);
Railway Regulation Act (Returns of Signal Arrangements, Working, &c.), 1873 (36 & 37 Vict. c. 76);

Sect. 12.

Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57);
and

Railway Regulation Act, 1893 (56 & 57 Vict. c. 29).

Add Railway Regulation Act, 1851 (14 & 15 Vict. c. 64).

C. *Other Statutes as to Construction and Working.*

Highway (Railway Crossings) Act, 1839 (2 & 3 Vict. c. 45);

Railway Regulation (Gauge) Act, 1846 (9 & 10 Vict. c. 57);

Crown Lands Act, 1851 (14 & 15 Vict. c. 42), s. 2;

Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), ss. 6, 8, 9
(as to works in tidal waters);

Metropolis Management Amendment Act, 1862 (25 & 26 Vict.
c. 102), ss. 34, 35 (as to the works of a local authority inter-
fering with a railway);

Railway Companies' Powers Act, 1864 (27 & 28 Vict. c. 120);

Railways Construction Facilities Act, 1864 (27 & 28 Vict. c. 121);

Cotton Statistics Act, 1868 (31 & 32 Vict. c. 33);

Railways (Powers and Construction) Acts, 1864, Amendment
Act, 1870 (33 & 34 Vict. c. 19);

Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict. c. 50);

Explosives Act, 1875 (38 & 39 Vict. c. 17);

Railway Returns (Continuous Breaks) Act, 1878 (41 & 42
Vict. c. 20);

Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), ss. 21, 22, 23.

Railways (Electrical Power) Act, 1903 (3 Edw. 7, c. 30).

Quære whether Railway Clearing Act, 1850 (13 & 14 Vict. c. xxxiii.),
which is a local Act, but is to be deemed to be a public Act
(sect. 28), could be made use of by a light railway company.

See also the Acts referred to in the notes to sect. 19.

D. *Lease, Sale, Abandonment and Winding-up.*

Railway (Sales and Leases) Act, 1845 (8 & 9 Vict. c. 96);

Abandonment of Railways Act, 1850 (13 & 14 Vict. c. 83);

Cheap Trains and Canal Carriers Act, 1858 (21 & 22 Vict. c. 75),
s. 3;

Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114);

Companies Act, 1862 (25 & 26 Vict. c. 89), s. 199. (*Quære*
whether the words of the present sub-section are sufficient to
bring a light railway company, incorporated by an Order,
within the exception contained in sect. 199.)

E. *Cheap Trains and Conveyance of Soldiers, Sailors and Police.*

Railway Regulation Act, 1844 (7 & 8 Vict. c. 85), ss. 6, 7, 8, 9, 12;

Naval Enlistment Act, 1853 (16 & 17 Vict. c. 69), s. 18;

Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).

F. *Telegraphs.*

See note to sect. 25.

G. *Mails.*

Railways (Conveyance of Mails) Act, 1838 (1 & 2 Vict. c. 98);

Railway Regulation Act, 1844 (7 & 8 Vict. c. 85), s. 11;

Sect. 12.

Post Office (Parcels) Act, 1882 (45 & 46 Vict. c. 74);

Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38), s. 1.

H. *Taking Possession of Railway by Crown.*

Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16;

National Defence Act, 1888 (51 & 52 Vict. c. 31), s. 4.

I. *Accidents.*

Employers' Liability Act, 1880 (43 & 44 Vict. c. 42);

Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37);

Railway Employment (Prevention of Accidents) Act, 1900
(63 & 64 Vict. c. 27);

Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 106.

See also note (h) to sect. 55 of Tramways Act, 1870, *ante*,
p. 252.

J. *Finance.*

Railway Companies Securities Act, 1866 (29 & 30 Vict. c. 108).

K. *Rates and Taxes.*

Income Tax Act, 1860 (23 & 24 Vict. c. 14), ss. 5, 6;

Revenue Act, 1866 (29 & 30 Vict. c. 36), s. 8;

Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 48.

L. *Arbitration.*

Railway Companies Arbitration Act, 1859 (22 & 23 Vict. c. 59).

II. *Enactments extending to England and not to Scotland.*

Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 4, 33, 35,
36, 37, 38;

Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100),
ss. 32, 33, 34;

Railway Companies Act, 1867 (30 & 31 Vict. c. 127) (extends to
Scotland where it is expressly so provided);

Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1b);

Union Assessment Committee Amendment Act, 1864 (27 & 28
Vict. c. 39), s. 5;

Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 95.

See also the discussion on Rating, *ante*, p. 49.

III. *Enactments extending to Scotland and not to England.*

Railway Companies (Scotland) Act, 1867 (30 & 31 Vict. c. 126);

Lands Valuation (Scotland) Act, 1854 (17 & 18 Vict. c. 91);

Valuation of Lands (Scotland) Amendment Act, 1867 (30 & 31
Vict. c. 80);

Valuation of Lands (Scotland) Amendment Act, 1887 (50 & 51
Vict. c. 51);

Valuation of Lands (Scotland) Acts Amendment Act, 1894 (57 & 58
Vict. c. 36);

Lands Valuation (Scotland) Amendment Act, 1902 (2 Edw. 7,
c. 25).

See *ante*, pp. 88, 89, for the enactments which specifically relate
to light railways.

(r) Defined in sect. 28.

Sect. 12.

(s) The provisions as to passenger duty in the following enactments will, therefore, not apply to a light railway:—

Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79);

Railway Regulation Act, 1844 (7 & 8 Vict. c. 85);

Railway Passenger Duty Act, 1847 (10 & 11 Vict. c. 42);

Excise Act, 1848 (11 & 12 Vict. c. 118), s. 2;

Revenue Act, 1863 (26 & 27 Vict. c. 33), ss. 13, 14;

Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).

Mode of settling purchase-money and compensation for taking of land.

13.—(1.) Where any order under this Act incorporates the Lands Clauses Acts, any matter which under those Acts may be determined by the verdict of a jury, by arbitration, or by two justices (*t*), shall for the purposes of the order be referred to and determined by a single arbitrator (*u*) appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator then by the Board of Trade, and the provisions of this Act shall apply with respect to the determination of any such matter in lieu of those of the Lands Clauses Acts relating thereto. Provided that in determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous (*x*) lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway (*y*).

(2.) The Board of Trade may, with the concurrence of the Lord Chancellor (*z*), make rules fixing a scale of costs to be applicable on any such arbitration (*a*), and may, by such rules, limit the cases in which the costs of counsel are to be allowed (*b*).

(3.) The Arbitration Act, 1889, shall apply to any arbitration under this section (*c*).

52 & 53 Vict.
c. 49.

(*t*) See Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 23, 64, 68 (jury or arbitration), 130 (arbitration), 22, 121 (justices), 105, 115, 124 (general). The present section, *semble*, will not affect such provisions as the following: sects. 17 (certificate of two justices), 136 (recovery of penalties before justices), 9, 58, 59, 85, 106 (appraisement by surveyors whether appointed by justices or not).

The corresponding sections in Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), are: sects. 36 (jury), 23, 63,

123 (arbitration), 21, 114, 118 (sheriff), 96, 108 (general), 130 (recovery of penalties before sheriff or two justices), 9, 56, 84, 97 (appraisal by valuers whether appointed by sheriff or not). Sect. 13.

The two last-named sets of sections are unaffected by the present section, and so also, apparently by inadvertence, are sects. 21, 114 and 118, which provide for the assessment of compensation by a sheriff. The present section mentions "two justices" only, and says nothing about a sheriff.

(u) For the Scots equivalent, see sect. 26 (3).

In *Tuckett v. Isle of Thanet Electric Tramways and Lighting Co., Ltd.* (1901), "Times" Newspaper, Dec. 21, an arbitrator appointed by the Board of Trade under this provision recovered from the company the money due to him for his services as such arbitrator.

(x) The word "contiguous" is unusual in a statute, and apparently it must be taken in its strict, which is also its most natural, meaning, namely, "physically adjoining." It is true that it is sometimes used in a looser sense to mean little more than "neighbouring," but in a provision like the present it is reasonable to construe it strictly. For a case in which a clause in a deed containing this word was construed, see *Chadwick v. Marsden* (1867), L. R. 2 Ex. 285; 36 L. J. Ex. 177; see also note (s) to sect. 9 of Tramways Act, 1870.

(y) The words "lands and hereditaments" are wide enough to include every kind of land and building thereon, and it would appear that the arbitrator is entitled to take into consideration the enhancement of the value of the land and buildings by the advent of the light railway, in whatever manner such enhancement is produced, whether by increasing the actual value of the land and buildings as such or by increasing the commercial advantage of any business carried on thereon. If this be the correct view, the result to a company such as a railway company, whose land is taken, may be serious, inasmuch as the growth of traffic brought upon it by the light railway might counterbalance the value of the land taken. But it must be remembered that the arbitrator can only take into account the benefit which has accrued or which is certain to accrue to the remaining land and hereditaments of the vendor, and not some future benefit which is merely problematical. See further, note (x) to sect. 11.

(z) In Scotland, the Lord President of the Court of Session (sect. 26 (4)).

(a) The Rules for England and Scotland will be found *post*, p. 527.

Compare sect. 15 (2), of which the present sub-section is a rather awkward limitation.

(b) See Rule I. and Scales No. 2 and No. 3.

(c) For Scotland this provision is replaced by sect. 26 (3).

For a special arbitration clause, see *Mid-Suffolk Order*, 1900, Rep. VI. 26.

Sect. 14.

Payment of
purchase-
money or
compensation.

14. Any order under this Act may, notwithstanding anything in the Lands Clauses Acts, authorise the payment to trustees of any purchase-money or compensation not exceeding five hundred pounds.

Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 71, and Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), s. 69, respectively limit the amount of compensation payable to persons under disability, which may be paid to trustees in lieu of being paid into Court, to sums between 20*l.* and 200*l.*

Provisions
as to Board
of Trade.
37 & 38 Vict.
c. 40.

15.—(1.) If the Board of Trade hold a local inquiry for the purposes of this Act (*d*), Part I. of the Board of Trade Arbitrations, &c. Act, 1874 (*e*), shall apply to any inquiry so held as if—

- (a) the inquiry was held on an application made in pursuance of a special Act; and
- (b) the parties making the application for the order authorising the light railway, and in the case of an inquiry held with reference to an objection made to any such application the persons making the objection in addition, were parties to the application within the meaning of section three of the Act (*f*).

(2.) The Board of Trade may make such rules as they think necessary for regulating the procedure under this Act, whether before the Board of Trade or before the Light Railway Commissioners, and any other matters which they may think expedient to regulate by rule for the purpose of carrying this Act into effect (*g*).

(3.) There shall be charged in respect of proceedings under this Act before the Board of Trade or the Light Railway Commissioners such fees as may be fixed by the Treasury on the recommendation of the Board of Trade (*h*).

(4.) Any expenses of the Board of Trade under this Act shall, except so far as provision is made for their payment by or under this Act, be defrayed out of moneys provided by Parliament.

(5.) The Board of Trade shall present to Parliament Sect. 15.
annually a report of their proceedings and of the proceedings of the Light Railway Commissioners under this Act (*i*).

(*d*) See sect. 9 (*6*).

(*e*) Compare note (*d*) to sect. 63 of Tramways Act, 1870.

(*f*) The result of this provision is to make such parties liable to pay the Board all expenses incurred by them in relation to the inquiry. Such expenses are certified by the Board, and ordered by them to be paid by such parties as they direct. The expenses so certified as recoverable are a debt, and the Board's order is conclusive evidence of the amount.

The Board may also at any time order a sum on account of expenses to be paid, or security to be given, by all or any of the parties.

Compare with this sub-section Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27), s. 15 (*4*).

(*g*) The Rules at present in force (see *post*, p. 527) relate only to applications to the Commissioners.

(*h*) See Rule XXXVI.

(*i*) This report is published annually in or about the month of June, and, till 1903, included all applications made since the Act came into force, up to and including the applications of the previous November. It now only includes applications dealt with and pending up to the previous 31st December. It also details the proceedings of the Board and of the Commissioners up to the previous 31st December, together with statistics of mileage and estimated cost.

16.—(1.) The council of any county, borough, or district (*k*) may pay any expenses incurred by them and allowed by the Light Railway Commissioners with reference to any application for an order authorising a light railway under this Act (*l*), in the case of a county council as general expenses (*m*), in the case of a borough council out of the borough fund or rate (*n*), and in the case of a district council other than a borough council as general expenses under the Public Health Acts (*o*).

Expenses of
local authorities.

Provided that any expenses incurred by a county council under this Act may be declared by the order authorising the railway or, in the event of an unsuccessful application for such an order, by the Light

Sect. 16. Railway Commissioners, to be exclusively chargeable on certain parishes only in the county (*p*), and those expenses shall be levied accordingly as expenses for a special county purpose under the Local Government Act, 1888 (*q*).

51 & 52 Vict.
c. 41.

(2.) Where the council of any county, borough, or district (*k*) are authorised to expend any money by an order authorising a light railway under this Act (*r*), they may raise the money required,—

(a) if the expenditure is capital expenditure, by borrowing in manner authorised by the order; and

(b) if the expenditure is not capital expenditure, as if it was on account of the expenses of an application under this Act (*s*).

(3.) The Board of Trade may from time to time on the application of any council extend, subject to the limitations of this Act, the limit of the amount which the council are authorised by an order under this Act to borrow, or to advance to a light railway company (*t*), and the limit so extended shall be substituted for the limit fixed by the order (*u*).

(4.) Where an order under this Act authorises any council to borrow for the purposes of a light railway, suitable provision shall be made in the order for requiring the replacement of the money borrowed within a fixed period not exceeding sixty years, either by means of a sinking fund or otherwise (*x*).

(5.) Any profits made by a council in respect of a light railway shall be applied in aid of the rate out of which the expenses of the council in respect of the light railway are payable (*y*).

(6.) Where a rate is levied for meeting any expenditure under this Act, the demand note for the rate shall state, in a form prescribed by the Local Government Board, the proportion of the rate levied for that expenditure.

(*k*) For the Scots equivalents, see sect. 26 (2) and (6).

(*l*) This section covers all expenses duly incurred by a council with reference to an application, if the Commissioners have been satisfied that the council has authorised the expenditure and desires it to be allowed. It covers all expenses, whether incurred before the Commissioners or the Board of Trade, in reference to an application. Sect. 16.

The Commissioners have at present no regular official to attend to the allowance of these expenses, but Light Railways Bill, 1903, cl. 4, provided for the appointment of such a person.

Where a council has promoted an Order, the Order itself provides for the raising of the capital expenditure and the costs of obtaining the Order, and sometimes, as in *Dornoch Order*, 1899, Rep. I. 28, an Order granted to private promoters provides for the raising of the expenses of a council incurred in borrowing for the purpose of an advance.

The Commissioners will not order the promoters to pay the costs of a local authority any more than those of any other objector.

(*m*) See Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 68 (2) and (4).

(*n*) See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 139, 140, 144. In the case of metropolitan boroughs, the rate is called the general rate. (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10.)

(*o*) See Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 207 (urban authorities) and 229 (rural authorities).

(*p*) It will be observed that this proviso extends only to expenses incurred by a county council. An instance of the application of this proviso will be found in *Leek, Caldton Low and Hartington Order*, 1899, Rep. II. 9, and, as between a parish and the remainder of a county, in *Forsinard, Melvich and Port Skerra Order*, 1898, Rep. I. 22.

The power here given will not extend to the imposition of the expenses on a part only of a particular parish (*Wick and Lybster case* (1899), Rep. V. 54; Oxley, 88); but see *Dornoch Order*, 1899, Rep. I. 28.

(*q*) See sect. 68, sub-sects. 3, 5, 6, 7 and 8 of the Act. By sect. 26 (8) there must be substituted, for Scotland, Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50). See sect. 26 (3) and (4) of that Act.

(*r*) See sect. 11 (*g*) of the present Act, and the note thereto.

(*s*) This sub-section is replaced, for Scotland, by sect. 26 (5) and (6c).

(*t*) Defined in sect. 28.

(*u*) This application may be made informally, and no doubt the Board of Trade will require such information as it requires for the purposes of loans or supplemental loans under sect. 20 of Tramways Act, 1870; see note (*q*) thereto.

Sect. 16.

(x) See the model clauses, *post*, pp. 579, 628, and note (e) to sect. 11. The period for replacement usually prescribed is forty years, but sometimes fifty years has been permitted. (*Welshpool and Llanfair Order*, 1899, Rep. II. 23; *Tanat Valley Order*, 1899, Rep. II. 22; *Leek, Caldun Low and Hartington Order*, 1899, Rep. II. 9.)

(y) See sub-sect. 1 above.

Joint com-
mittees.

17.—(1.) The councils of any county, borough, or district (z), may appoint a joint committee for the purpose of any application for an order authorising a light railway under this Act, or for the joint construction or working of a light railway, or for any other purpose in connection with such a railway for which it is convenient that those councils should combine.

51 & 52 Vict.
c. 41.
56 & 57 Vict.
c. 73.

(2.) The provisions of the Local Government Act, 1888, or of the Local Government Act, 1894, as the case may be, with respect to joint committees (a), shall apply to any joint committee appointed for the purpose of this Act by any councils who could appoint a joint committee under those Acts, but where the councils have no power under those Acts to appoint a joint committee (b) the provisions in the Third Schedule to this Act shall apply.

(z) For the Scots equivalents, see sect. 26 (2) and (6).

(a) The material sections are sect. 81 of the former Act (as to joint committees of county councils) and sect. 57 of the latter (as to joint committees of parish and district councils). For Scotland, Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), and Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), are to be respectively substituted. (See sect. 26 (8) of the present Act.) The material sections of these Acts are sect. 76 of the former (as to joint committees of county councils and town councils) and sect. 34 of the latter (as to joint committees of parish, town and county councils). Compare *Tramways Act*, 1870, s. 17.

(b) As, for instance, where it is desired to form a joint committee of a county and a borough or district council, or of two borough councils, in England.

It will be observed that the provisions of the Scots Acts are wider than those of the English Acts.

Working of

18. Where a company have power to construct or

work a railway, they may be authorised by an order under this Act to construct and work or to work the railway or any part of it as a light railway under this Act.

Sect. 18.

ordinary
railway
as light
railway.

Compare Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), ss. 27 to 29, which permit the Board of Trade to do by licence what this section authorises to be done by Order. They provide for the imposition of regulations by the Board of Trade, and limit the load to eight tons for every pair of wheels and the speed to twenty-five miles per hour.

An Order may be made solely for the purposes of this section (*Glasgow and South Western Railway (Cairn Valley) Order*, 1900, Rep. V. 48), or for the purposes of this section combined with other purposes under the Act (*North Sunderland Order*, 1898, Rep. III. 20), or it may be an amending Order under sect. 24 in addition to authorising matters under the present section. (*Vale of Rheidol (Amendment) Order*, 1902, Rep. X. 26.)

The line which the Order gives power to work as a light railway may be already constructed (*Bere Alston and Calstock Order*, 1900, Rep. VI. 4; *East and West Yorkshire Union Order*, 1901, Rep. VII. 16), or not yet constructed (*Gifford and Garvald Order*, 1898, Rep. II. 26); it may be an ordinary railway, or a railway not used for passenger traffic (*Carmyllie Order*, 1899, Rep. I. 20); or it may be a light railway, whether authorised by Act of Parliament (*Cranbrook and Tenterden Order*, 1900, Rep. V. 11; *Vale of Rheidol (Amendment) Order*, 1902, Rep. X. 26), or constructed and worked by licence under Regulation of Railways Act, 1868. (*Cawood, Wistow and Selby (Extension) case* (1899), Rep. V. 6; Oxley, 96.) *Southwold Order*, 1902, Rep. VIII. 17, converts the gauge of such a licensed railway.

It should be remembered that the ordinary rules have to be complied with, even in the case of applications by which only an Order under this section is sought. (*Gifford and Garvald case* (1896), Rep. I. 23; Oxley, 31.)

19.—(1.) Where any person has power, either by statute or otherwise, to sell and convey any land for the purpose of any works of a light railway, he may, with the sanction of the Board of Agriculture given under this section, convey the land for that purpose either without payment of any purchase-money or compensation or at a price less than the real value, and may so convey it free from all incumbrances thereon(c).

Power of
owners to
grant land
or advance
money for a
light railway.

Sect. 19.27 & 28 Vict.
c. 114.

(2.) Whenever any person who is a landowner within the meaning of the Improvement of Land Act, 1864, contributes any money for the purpose of any works of a light railway, the amount so contributed may, with the sanction of the Board of Agriculture given under this section, be charged on the land of the landowner improved by the works in the same manner and with the like effect as in the case of a charge under that Act (*d*).

(3.) The Board of Agriculture shall not give their sanction under this section unless they are satisfied that the works for which the land is conveyed or the money is contributed will effect a permanent increase in the value of the land held by the same title or of other land of the same landowner exceeding, in the case of a conveyance of land, that which is, in the opinion of the Board of Agriculture, the real value of the land conveyed or the difference between that value and the price, as the case may be, and in the case of a contribution of money the amount contributed: Provided also, that if the land proposed to be conveyed is subject to incumbrances, the Board of Agriculture, before giving their sanction under this section, shall cause notice to be given to the incumbrancers, and shall consider the objections, if any, raised by them (*e*).

(c) Where an Order or Act authorising a light railway incorporates either of the Lands Clauses Consolidation Acts, 1845 (8 & 9 Vict. cc. 18 and 19), limited owners and persons under disability are empowered by sect. 7 of each of these Acts so incorporated to sell, convey and release the land purchased by the promoters at the full value, as determined by two surveyors or valuers (sect. 9). It is to them that the present section particularly refers, and it enables them to convey such land without consideration or at an under-value, with the consent of the Board of Agriculture. There are other Acts, also, to which the present section must be taken to apply, which authorise sales by or on behalf of limited owners and persons under disability for purposes which would include the making of a light railway, though this purpose is not specifically mentioned. Such Acts are Settled Land Act, 1882 (45 & 46 Vict. c. 38), whereby (sects. 3, 4) a tenant for life may sell or exchange land, but it must be at the best price or consideration that can

reasonably be obtained; and Lunacy Act, 1890 (53 & 54 Vict. c. 120), whereby (sect. 120) a lunatic's committee may, by the leave of the judge, sell or exchange the lunatic's property. As to sales by heirs of entail in Scotland, under certain circumstances, by private bargain or public roup, see Entail Amendment (Scotland) Act, 1868 (31 & 32 Vict. c. 84), and Entail (Scotland) Act, 1882 (45 & 46 Vict. c. 53). The words "or otherwise" will cover the case of trustees, executors, administrators, &c. who are obliged, by their position or the instrument under which they act, to sell, if they have a power to sell, at the best terms obtainable. In all these cases the present section gives the Board of Agriculture power, on being satisfied of the matters mentioned in sub-sect. 3, to authorise a sale on the terms mentioned in the present sub-section.

As to free grants of land by landowners, see sect. 5 (1a). Instances will be found in the *Dornoch case* (1897), Rep. I. 28; Oxley, 6; and the *Forsinard, Melvich and Port Skerra case* (1898), Rep. I. 22; Oxley, 9.

(d) Improvement of Land Act, 1864, applies both to England and to Scotland, and its operation is specially preserved by Entail Amendment (Scotland) Act, 1875 (38 & 39 Vict. c. 61), s. 14, an Act which contains similar provisions with respect to expenditure on improvements. "Landowner," in Improvement of Land Act, 1864, means (sect. 8): "As to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the Commissioners [now the Board of Agriculture, by Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2 (1b)], without regard to the real amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exception, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such lands; and as to lands in Scotland, the word 'landowner' shall denote and include every fiar, life renter, or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases or tenancies of the tenants in the actual possession thereof; . . . and as to lands in any part of the United Kingdom, the word 'landowner' shall include a corporation, and also such persons as are empowered by the 23rd [this must be an

Sect. 19. error for 24th] section hereof." By sect. 24, "All husbands, guardians, tutors, committees, curators, feoffees, trustees, judicial factors, executors and administrators shall respectively have the same rights and powers . . . under this Act, as their respective wives, infants, minors, lunatics, idiots, and furious or fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors or administrators respectively would have had if the estates, charges or interests of which they shall be such feoffees, trustees or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right."

The same Act, sects. 78 to 89, contains provisions enabling the landowner to subscribe for shares and stock in a railway or canal which will benefit his land, and to charge the amount on the land, after sanction has been given by the Commissioners (now the Board of Agriculture), who have to be satisfied of certain matters. It would seem that the present sub-section is intended to extend and modify these provisions by making them apply to contributions for the purposes of a light railway, and by substituting sub-sect. 3 for the conditions under which the Board could give their consent under the Improvement of Land Act. The word "contributes" is quite wide enough to include money paid in consideration of shares, or even money paid on the security of debentures, if the Board thought fit in this latter case to sanction a charge on the land as well. If such contributions were not embraced in this sub-section, it would be of little practical use.

For instances of subscription to the share capital by a landowner, see *Dornoch case* and *Forsinard, Melvich and Port Skerra case, ub. sup.*

The manner of charging money under the Act is contained in sects. 49 to 52. The sum charged may include the expenses of the application to the Board of Agriculture, with interest on the whole at a rate not exceeding 5 per cent. up to the date when the charge is made. The charge is to be in the form given in Sched. B. to the Act and is to be by way of rent-charge payable every six months, each payment to consist of interest and the repayment of a proportionate part of the loan.

(e) By Rule XXXII. (f), every application for an Order must be accompanied by a statement whether the consent of the Board required to any grant of land has been obtained.

Power to
grant Crown
lands.

20. The Commissioners of Woods shall, on behalf of Her Majesty, have the like powers to convey Crown lands as are by this Act conferred upon persons having power, either by statute or otherwise, to sell and convey lands, except that in the case of Crown lands the

sanction of the Treasury shall be substituted for the sanction of the Board of Agriculture. Sect. 20.

This section merely places the Commissioners of Woods [*i.e.*, the Commissioners of His Majesty's Woods, Forests and Land Revenues for the time being (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (12))] in the same position as the persons mentioned in sect. 19; it does not authorise the compulsory taking of Crown lands. Such taking is, however, expressly forbidden, *ex majori cautela*, in *Bridgewater, Stowey and Stogursey Order*, 1901, Rep. VII. 6. But, even if it did authorise the compulsory taking of Crown lands under the control of the Commissioners of Woods, it would not affect lands under the control of other Government departments. (Compare cases cited in *Hornsey Urban District Council v. Hennell*, [1902] 2 K. B. 73; 71 L. J. K. B. 479.) It is clear, however, that the present Act does not bind the Crown in general, since there is no allusion to the Crown in it, except in this section and elsewhere in respect of the various Crown departments which are given various powers under the Act. (*Mersey Docks and Harbour Board Trustees v. Cameron* (1864), 11 H. L. C. (11 E. R.) 443; 35 L. J. M. C. 1.) This has been recognised by the Light Railway Commissioners and the Board of Trade in *Great Western Railway (Pewsey and Salisbury) Order*, 1898, Rep. II. 14, whereby the War Department is given complete control over any proposed interference with its property or rights.

Clauses for the protection of the property of the Duchy of Lancaster will be found in *Tickhill Order*, 1901, Rep. VII. 35.

Works below high-water mark are not to be commenced without the previous written consent of the Board of Trade (*Southwold Order*, 1902, Rep. VIII. 17), nor is the foreshore to be interfered with without such consent. (*Cromarty and Dingwall Order*, 1902, Rep. I. 21.)

Clauses for the protection of the Secretary of State for War, giving him control over the construction of a portion of the railways and over the construction and alteration of certain crossings, &c., and preserving his rights, will be found in *Aldershot and Farnborough Order*, 1902, Rep. V. 1. *Sheerness and District Order*, 1902, Rep. VIII. 16, gives him certain control over the railways where they pass his land and buildings, and enables him to take over the management of the railways in times of emergency. See, too, *Great Western Railway (Pewsey and Salisbury) Order*, 1898, *ub. sup.*; and *Dover, St. Margaret's and Martin Mill case* (1902), Rep. (1903) XII. 15. *Bentley and Bordon Order*, 1902, Rep. XI. 21, and *Amesbury and Military Camp (Bulford Extension) Order*, 1903, Rep. (1903) XII. 12, recite that the applications were made by a railway company at the instance of the War Department, and that the lines would be of great service to the War Department. They empower the company to make agreements with the Department for the working and management of the railway. Such agreements have since been made.

Sect. 20. For objections taken by the Commissioners of Woods, see *Hastings, Bexhill and District case* (1898), Rep. III. 11; Oxley, 162.

For a general saving of the Crown's rights, see *Bridgwater, Stowey and Stogursey Order*, 1901, Rep. VII. 6, and *Cromarty and Dingwall Order*, 1902, Rep. I. 21.

See Rule V. (*post*, p. 528) for the deposits required to be made with various Government departments.

Provision as
to commons.

21.—(1.) No land being part of any common, and no easement over or affecting any common, shall be purchased, taken, or acquired under this Act without the consent of the Board of Agriculture, and the Board shall not give their consent unless they are satisfied that, regard being had to all the circumstances of the case, such purchase, taking, or acquisition is necessary, that the exercise of the powers conferred by the order authorising the railway will not cause any greater injury to the common than is necessary, and that all proper steps have been taken in the interest of the commoners and of the public to add other land to the common (where this can be done) in lieu of the land taken, and where a common is divided to secure convenient access from one part of the common to the other (*f*).

(2.) The expression “common” in this section shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882 (*g*), any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1878 (*h*), and any town or village green (*i*).

(*f*) See Rule VIII. Rule XXXII. (*f*) requires that every application shall be accompanied by a statement whether any consent of the Board of Agriculture, required for the proposed acquisition of any common land, has been obtained. Mr. Oxley's report of the *Gower case* (1897), Rep. I. 16; Oxley, 13, gives the matters into which the Board requested the Commissioners to inquire, in order that they might be able to decide whether to give their consent or not. These matters correspond very closely with the matters enumerated in the present sub-section. Their consent, when given, is recited in the Order. See, for the recital and appropriate provisions, *post*, pp. 549, 564.

In the *Nutley, Crowborough and Groombridge case* (1899), Rep. V. 34; Oxley, 103, the Commons Preservation Society appeared as objectors.

Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 99 to 107; Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), ss. 93 to 98; and Inclosure Act, 1854 (17 & 18 Vict. c. 97), ss. 15 to 20, provide for the assessment and application of the compensation to be paid for common lands. These, as altered by sect. 13 of the present Act, and with the substitution of the Board of Agriculture for the Land Commissioners (Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2 (1b)), will apply to compensation for commons taken under a Light Railway Order.

(g) These fifteen Acts are enumerated and collectively intituled by Short Titles Act, 1896 (59 & 60 Vict. c. 14).

Land liable to be enclosed by them is the following:—By Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 11: “All lands subject to any rights of common whatsoever, and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof; all gated and stinted pastures in which the property of the soil or of some part thereof is in the owners of the cattle gates or other gates or stints, or any of them; and also all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattle gates or other gates or stints, or any of them; all land held, occupied or used in common, either at all times or during any time or season or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; all land in which the property or right of or to the vesture or herbage, or any part thereof, during the whole or any part of the year, or the property or right of or to the wood or underwood growing and to grow thereon, is separated from the property of the soil; and all lot meadows and other lands, the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation, or otherwise,” except (sect. 13) the New Forest and the Forest of Dean and (sect. 15) town greens and village greens (see note (*i*) below), and also except (sect. 12) “waste lands of any manor on which the tenants of such manor have rights of common,” and “any land whatsoever subject to rights of common which may be exercised at all times of every year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year and which shall not be limited by number or stints,” and (sect. 14) “lands situate within fifteen miles of the City of London or within two miles and a half of any city or town of

Sect. 21. 20,000 inhabitants, or within three miles and a half of any city or town of 70,000 inhabitants, or within four miles of any city or town of 100,000 inhabitants." But in the cases mentioned in the last two sections inclosure may take place under the Act with the previous authority of Parliament in each particular case. Sect. 12 also preserves the rights of the Admiralty. Parts of the Forest of Dean, however—namely, Walmore and the Bearce Commons—were permitted to be enclosed by Dean Forest (Walmore and the Bearce Commons) Act, 1866 (29 & 30 Vict. c. 70). Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122), s. 5, also takes metropolitan commons, as such, out of the operation of the Inclosure Acts. (See note (*h*) below.)

(*h*) See Short Titles Act, 1896 (59 & 60 Vict. c. 14), and add, now, Metropolitan Commons Act, 1898 (61 & 62 Vict. c. 43). A "metropolitan common" is, by Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122), s. 2, "Land subject at the passing of this Act to any right of common, (sect. 3) the whole or any part whereof is situate within the metropolitan police district as defined at the passing of this Act." The metropolitan police district is constituted and defined by Metropolitan Police Act, 1829 (10 Geo. IV. c. 44), s. 4, and Schedule, while sect. 34 of that Act and Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 2, give power to extend it by Order in Council. This was done by Order in Council dated Jan. 3, 1840. It also includes Trafalgar Square by Trafalgar Square Act, 1844 (7 & 8 Vict. c. 60), s. 3. The present limits of the district so constituted will be found in Archibald's Metropolitan Police Guide (ed. 3), p. 32. Metropolitan Commons Amendment Act, 1869 (32 & 33 Vict. c. 107), s. 2, adds to the above definition of metropolitan common "any land subject to be included [*qu.* enclosed] under the provisions of 8 & 9 Vict. c. 118" (for which see note (*g*) above).

(*i*) These are not subject to be enclosed under the Inclosure Acts, though they may be allotted as recreation grounds. (Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 15.)

This section has no application to Scotland.

Preservation
of scenery
and objects
of historical
interest.

22. If any objection to any application for authorising a light railway is made to the Light Railway Commissioners, or if any objection to any draft order is made to the Board of Trade on the ground that the proposed undertaking will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery, the Commissioners and the Board of Trade respectively shall consider any such objection, and give to those by

whom it is made a proper opportunity of being heard Sect. 22.
in support of it.

Compare Private Legislation Procedure (Scotland) Act, 1899, s. 17, *ante*, p. 322.

As to the making of objections to the Commissioners and the Board of Trade, see note (*y*) to sect. 7 and note (*l*) to sect. 9 respectively.

An objection was taken under this section by the National Trust for the Preservation of Places of Natural Beauty in the *Didcot and Watlington (Extension) case* (1899), Rep. V. 13; Oxley, 74.

23. Any junction of a light railway authorised under this Act with any existing railway shall so far as is in the opinion of the Board of Trade reasonably practicable avoid interference with lines of rails used for passenger traffic. Junctions
with existing
railways.

By Rules XVI. and XXV., where a junction is proposed, the plan and section must show the course of the existing or authorised railway for 800 yards on either side of the proposed junction.

It will be observed that this section makes the Board of Trade alone, and not the Commissioners, the arbiters of this particular matter.

For the ordinary clauses with respect to junctions, see *post*, pp. 561, 605, and compare *Lastingham and Rosedale Order*, 1900, Rep. VI. 21; *Mid-Suffolk Order*, 1900, Rep. VI. 26; and *Roberts-bridge and Pevensey Order*, 1900, Rep. VI. 32.

With regard to junctions in general, see Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), ss. 9 to 12. Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 87, gives the constructing company power to contract for the passage along their railway of the vehicles of other companies, and for the passage of their own vehicles along the railways of other companies.

The Law Officers have advised that the Commissioners and Board of Trade have power under the present Act to authorise a junction between a light railway and an existing railway without the consent of the owners of the latter. If this view is correct, it must be based on general considerations, and on this section and sects. 7 (4) and 11 (c), (d) and (m) of the present Act. But it must be observed that these sections do not expressly authorise compulsory junctions, and in particular the present section might be intended to apply to junctions made by arrangement. The sections, too, of Railways Clauses Act, 1863, only apply where the junction has in fact been authorised by the special Act (that is to say, in the case of a light railway, the Order); and do not themselves authorise a junction;

Sect. 23. and it should be observed that the Lands Clauses Consolidation Acts, 1845 (8 & 9 Vict. cc. 18 and 19), do not themselves authorise the acquisition of an easement by a railway. (*Pinchin v. London and Blackwall Railway Co.* (1854), 5 De G. M. & G. 851; 24 L. J. Ch. 417.)

On principles similar to those enunciated in the present section the Commissioners and Board of Trade are averse to permitting a light railway to cross an existing railway on the level: see *Doncaster Corporation Order*, 1900, Rep. V. 15; and see further as to this matter, *ante*, p. 19.

Amendment
of order.

24. An order authorising a light railway under this Act may be altered or added to by an amending order made in like manner and subject to the like provisions as the original order (*k*).

Provided that—

- (a) the amending order may be made on the application of any authority or person (*l*); and
- (b) the Board of Trade, in considering the expediency of requiring the proposals for amending the order to be submitted to Parliament (*m*), shall have regard to the scope and provisions of the original order; and
- (c) the amending order shall not confer any power to acquire the railway except with the consent of the owners of the railway (*n*).

(*k*) In spite of these words, the procedure on an application for an amending Order is, as a rule, considerably shorter than that which has to be adopted on an application for an original Order. By Rule XXXVIII. "such of the requirements of these rules as are inapplicable will be dispensed with." Certain of the rules, however, refer in terms to applications for amending Orders, and these rules, presumably, will not be dispensed with. They are Rules I. to III. (as to advertisements), Rule VII. (as to objections), Rule XXVIII. (as to notices of amending Orders for abandonment), and Rule XXIX. (as to notices of amending Orders proposing to repeal protective clauses). Rule XXXII. will apply as to the date of application, but all the statements therein mentioned will generally not be required. Rule XXXVI. (as to fees) applies in all cases.

In particular, notices under Rules XXVI. and XXVII. will not be required in cases where the persons to whom these rules provide that notice shall be given are clearly not affected by the proposed amendment (compare note (a) to sect. 7), but notices under Rules XXVIII. and XXIX. are essential, where these rules apply.

Again, it will depend on the nature of the amending Order which is applied for whether a local inquiry is held or not. Local inquiries have hitherto not been held where the application has been for extension of time or for alterations in capital or borrowing powers, but they have always been held where extensions of lines, deviations, alterations of works or alterations of motive power have been applied for. Where an amending application has been made before a local inquiry has been held on the original application, it is the practice to hold a single local inquiry on both applications, and generally to embody the result of the two applications in a single Order. (See notes (u) and (a) to sect. 7.)

The Commissioners, however, whether they propose to hold a special local inquiry or not, give notice of the application in the usual way, and if an objector brings forward any reasons which seem to demand a local inquiry, such an inquiry will be held.

An amending Order may amend two or more Orders; an instance is *Spen Valley and Morley (Extensions) Order*, 1902, Rep. X. 19. In the *Dudley, Halesowen and District (Extensions) case* (1902), Rep. (1903) XIII. 7, it is proposed to amend five Orders.

(l) See sect. 2 as to applications for an original Order.

(m) See sect. 9 (1a) and note (i) thereto.

(n) Compare sect. 11 (l) and note (k) thereto.

Amending Orders have hitherto been applied for and made after the confirmation of the principal Order for the following purposes, or for two or more of them in combination :—

1. *Alterations of and Additions to Works.*

(a) Extensions. (See *Rhyl and Prestatyn (Extensions) Order*, 1900, Rep. VIII. 23, and *Potteries (Extensions) Order*, 1902, Rep. IX. 18.) For model form, see *post*, p. 638.

The Order contains the necessary amendments as to capital and other matters, and provides, if necessary, for an additional deposit. It applies the provisions of the principal Order to the extensions, with such variations and exceptions as are deemed proper. It also may make provision for a further deposit and the payment out thereof and of the original deposit.

For an instance of an application of the provisions of two preceding Orders to extensions or parts thereof, see *Spen Valley and Morley (Extensions) Order*, 1902, Rep. X. 19.

Spen Valley (Extensions) Order, 1901, Rep. VII. 34, only authorises certain extensions subject to the non-construction of similar railways by local authorities under their existing powers.

Sect. 24. (b) Deviations. (See *West Hartlepool (Deviation, &c.) Order*, 1901, Rep. VII. 38; *Middleton (Deviation, &c.) Order*, 1902, Rep. X. 11.)

For form, see *post*, p. 640. This form, again, shortly applies the provisions of the principal Order to the deviation.

(c) Substitution of cattle-guards for gates at level crossings. (*Basingstoke and Alton (Amendment) Order*, 1900, Rep. VI. 24; *Rother Valley (Extensions) Order*, 1902, Rep. X. 15.)

(d) Substitution of level crossings for bridges. (*Lizard (Amendment) Order*, 1902, Rep. X. 9; *Vale of Rheidol (Amendment) Order*, 1902, Rep. X. 26.)

(e) Compulsory powers to acquire lands for road widening. (*Flamborough and Bridlington (Amendment) Order*, 1899, Rep. IV. 9.)

The Order will include powers to raise additional capital for the purpose.

(f) Power to use electricity. (*Lizard (Amendment) Order*, 1902, Rep. X. 9.)

(g) Power to construct and work a light railway authorised by statute as a light railway under this Act. (*Vale of Rheidol (Amendment) Order*, 1902, Rep. X. 26.)

(h) Weight of rails and load. (*Gower (Amendment) Order*, 1902, Rep. X. 25.)

(i) Railways on roadside wastes. (*Spen Valley and Morley (Extensions) Order*, 1902, Rep. X. 19.)

2. *Extension of Time.*

This is the most usual purpose for which an amending Order is sought. (See *Bridlington and North Frodingham (Extension of Time) Order*, 1901, Rep. IX. 3; *Pewsey and Salisbury (Extension of Time) Order*, 1901, Rep. IX. 17.) The common form of original Order provides for a definite period within which land may be compulsorily purchased, but gives the Board of Trade power to extend the period for the completion of the works. (See *post*, pp. 554, 556, 592.) If the company desire an extension of the latter period, they apply direct to the Board, and notice of their application is published and a date fixed for the sending in of objections. (Compare *London Gazette*, 1902, Vol. I. p. 2862.) If an extension of the former period or of both periods is desired, an amending Order must be applied for. The usual form is given *post*, p. 642.

In the *Crowland and District (Amendment) case* (1901), Rep. X. 7, the Commissioners refused to approve finally an Order authorising an extension of time till they were satisfied as to the financial prospects of the company.

Isle of Thanet (Amendment) Order, 1901, Rep. IX. 11, revives certain powers of the company and limits the time for their exercise; so powers of compulsory purchase are revived by *Crowland and District (Amendment) Order*, 1902, Rep. X. 7. Compare *Didcot and Watlington (Amendment) case* (1902), Rep. (1903) XIII. 5.

Sect. 24.

3. *Abandonment of part of an undertaking.*

See *Amesbury and Military Camp (Amendment) Order*, 1901, Rep. IX. 12. A form of Order is given *post*, p. 644.

4. *Alterations of Capital and Borrowing Powers.*

As to the insertion of these in Orders for extensions, deviations and the acquisition of land, see above, 1 (a), (b) and (c). Special applications are sometimes made for power to issue preference shares. (See *Mid-Suffolk (Amendment) Order*, 1901, Rep. IX. 15; *Grimsby and Saltfleetby (Amendment) Order*, 1902, Rep. XI. 18.)

An increase in the amount of interest to be paid out of capital during construction is authorised by *Gower (Amendment) Order*, 1902, Rep. X. 25, and also an increase in the amount which must be due to the mortgagees before an application for a receiver is made.

A successful application has also been made for an increase of capital, power to local authorities to advance further sums, power to a railway company to subscribe, and increased borrowing powers. (*Welshpool and Llanfair (Amendment) Order*, 1901, Rep. IX. 27. Compare *Tanat Valley (Amendment) Order*, 1901, Rep. IX. 21, and *Vale of Rheidol (Amendment) Order*, 1902, Rep. X. 26.) A provision as to calls is repealed and borrowing powers are varied by *Colne and Trawden (Capital and Further Powers Amendment) Order*, 1902, Rep. XII. 3. *Tanat Valley (Amendment) Order*, 1901, *ub. sup.*, contains provisions for a Treasury grant.

5. *Alteration of Rates.*

By the addition of bicycle rates in *Barnsley and District (Extensions) Order*, 1902, Rep. VII. 2.

6. *Working Agreements* are authorised by *Hadlow (Amendment) Order*, 1901, Rep. IX. 8, and *Colne and Trawden (Capital and Further Powers Amendment) Order*, 1902, Rep. XII. 3.

Where the clauses in the principal Order as to houses of the labouring class, or for the protection of the Postmaster-General, or with respect to other matters, are not in accordance with the clauses inserted in the more recent Orders, the Commissioners take the opportunity of an amending Order to modify them so as to bring them into accordance with such clauses. Further protective clauses will, of course, be added where they are required. In appropriate cases a light railway company, in lieu of applying for an amending Order, may make an application for a certificate under Railway Companies' Powers Act, 1864 (27 & 28 Vict. c. 120), duly following the procedure prescribed by that Act. This has recently been done by the Axminster and Lyme Regis Company. (See London Gazette, Nov. 11, 1902.)

As to amendments to an Order permitted before confirmation, see note (a) to sect. 7.

Sect. 25. Telegraph Act, 1878, shall include an order authorising a light railway under this Act.

to telegraphs.
41 & 42 Vict.
c. 76.

The particular object of this provision is to enable the Postmaster-General to establish telegraphic lines on the light railway (sect. 6 of Telegraph Act, 1878) on the terms mentioned in that section, and to provide for disturbances or alterations of his wires caused by the works executed under the Order. (Sect. 7; see also sects. 8 and 9.)

This provision is rendered necessary by the use of the words "Act of Parliament" in sects. 6 and 7; but, in so far as the various Telegraph Acts (including Telegraph Act, 1878) apply to railways in general, they will apply to light railways by virtue of sect. 12 (2) of the present Act.

The Telegraph Acts are cited as Telegraph Acts, 1863 to 1899, by Telegraph Act, 1899 (62 & 63 Vict. c. 38), s. 4, and those of them which are here material are the following:—

Telegraph Act, 1863 (26 & 27 Vict. c. 112);

Telegraph Act Amendment Act, 1866 (29 & 30 Vict. c. 30);

Telegraph Act, 1868 (31 & 32 Vict. c. 110);

Telegraph Act, 1870 (33 & 34 Vict. c. 88);

Telegraph Act, 1878 (41 & 42 Vict. c. 76).

Application
to Scotland.

26. This Act shall apply to Scotland with the following modifications:—

(1.) In section five of this Act the expression "Secretary for Scotland" shall be substituted for the expressions "Board of Agriculture" and "Board of Trade" respectively, occurring in that section;

(2.) References to the council of any county, borough, or district(*o*), shall be construed as references to the county council of any county, or the town council, or where there is no town council the police commissioners, of any burgh, or the commissioners of any police burgh(*p*), or the district committee of any district under the Local Government (Scotland) Act, 1889(*q*); or in any county where there is no district committee(*r*) any two or more parish councils may combine;

(3.) "Arbiter" shall be substituted for "arbitrator"(*s*), and that arbiter shall be deemed

52 & 53 Vict.
c. 50.

to be a single arbiter within the meaning of Sect. 26. the Lands Clauses Acts (*t*), and in lieu of the provisions of the Arbitration Act, 1889, the provisions of the Lands Clauses Acts (*t*) with respect to an arbitration shall apply, except the provisions of the said Acts as to the expenses of the arbitration, in lieu of which the following provision shall have effect, namely, the expenses of the arbitration and incident thereto shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses, or any part thereof, shall be paid, and may tax or settle the amount of expenses to be so paid, or any part thereof, and may award expenses to be paid as between agent and client (*u*);

(4.) The Lord President of the Court of Session shall be substituted for the Lord Chancellor(*x*);

(5.) The money necessary to defray expenditure, not being capital expenditure incurred by a county council in pursuance of this Act, shall be raised by a rate imposed along with but as a separate rate from the rate for maintenance of roads (herein-after referred to as "the road rate") leviable under the Roads and Bridges (Scotland) Act, 1878, upon lands ^{41 & 42 Vict. c. 51.} and heritages within the county, or the district, or the parish, as the case may be (*y*). The money necessary to defray expenditure similarly incurred by a town council, or police commissioners, or burgh commissioners (*p*) shall be raised by a rate imposed along with but as a separate rate from the police assessment or burgh general assessment, as the case may be (*z*). If the expenditure incurred is capital expenditure it shall be raised by borrowing in the manner authorised by the order, the rate chargeable

Sect. 26.

for repayment of capital, including interest and expenses, being the same rate as is liable for maintenance as aforesaid (*a*);

- (6.) The provisions relating to district councils shall apply to district committees (*q*) or combinations of parish councils (*r*), subject to the following modifications—

(a) A district committee (*q*) shall not be entitled to make an application under section two hereof except with the consent of the county council given at a special or statutory meeting of the council, of which one month's special notice, setting forth the purpose of the meeting, shall have been sent to each councillor (*b*),

(b) A resolution to give such consent shall not be passed by the council unless two-thirds of the councillors present and voting at the special or statutory meeting concur in the resolution (*b*),

(c) Nothing in this Act shall authorise a district committee (*q*) to raise money by rate or loan, but any money necessary to defray expenditure, not being capital expenditure incurred by it in pursuance of this Act, shall be raised by the county council by a rate imposed along with but as a separate rate from the road rate; and any money necessary to defray capital expenditure shall be raised by the county council by borrowing in the manner authorised by the order, as in section sixteen hereof mentioned (*c*);

- (7.) The expression "Clauses Acts" (*d*) shall mean the Lands Clauses Acts (*t*), the Railway Clauses Consolidation (Scotland) Act, 1845, the Companies Clauses Consolidation (Scotland) Act, 1845, the Companies Clauses Act, 1863, the

Railways Clauses Act, 1863, and the Companies Clauses Act, 1869 (*e*); Sect. 26.

- (8.) References to the Local Government Act, 1888, and the Local Government Act, 1894 (*f*), shall be construed as references to the Local Government (Scotland) Act, 1889, and the Local Government (Scotland) Act, 1894; 52 & 53 Vict.
c. 50.

- (9.) In order to carry out in Scotland the provisions contained in sub-section (1)(c) of section five of this Act, it shall be the duty of the assessor of railways and canals, as regards any parish to which the said sub-section (1)(c) applies, to enter on his valuation roll either the annual value of the light railway within such parish ascertained in terms of the Valuation of Lands (Scotland) Acts (*g*), or the annual value at which the land occupied by or for the purposes of the light railway would have been assessed if it had remained in the condition in which it was immediately before it was acquired for the purposes of the railway, whichever is less; 57 & 58 Vict.
c. 58.

- (10.) Where a light railway constructed under the powers of this Act is owned or leased by an existing railway company, such light railway shall not be valued by the said assessor as part of the general undertaking of the railway company, but shall be valued as a separate undertaking (*h*).

(*o*) See sects. 2, 3, 4, 7, 11, 16 and 17.

(*p*) Now, by Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), s. 5, a town council is to be elected for every burgh under the provisions of that Act, and the powers of the various commissioners are vested in them by sect. 7.

(*q*) See sects. 77 to 82, inclusive.

(*r*) See sect. 77 (1) of the last-mentioned Act.

(*s*) In sect. 13 (1).

(*t*) That is to say, Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106), and any Acts for the time

Sect. 26. being in force amending the same (by Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 23 (b)).

(u) This provision is substituted for sect. 13 (3).

(x) In sect. 13 (2).

(y) See note (cc) to Sched. A. of Tramways Act, 1870, *ante*, p. 273.

(z) See note (b) to Sched. A. of Tramways Act, 1870.

(a) This sub-section and sub-sect. 6 (c) must be substituted for sect. 16 (2) of this Act.

(b) Compare Sched. I.

(c) See sub-sect. 5, above.

(d) In sects. 11 (a) and 12.

(e) 8 & 9 Vict. c. 33; 8 & 9 Vict. c. 17; 26 & 27 Vict. c. 118; 26 & 27 Vict. c. 92; and 32 & 33 Vict. c. 48, respectively.

(f) In sects. 16 (1) and 17 (2).

(g) This expression, which is not defined by any statute, will include Lands Valuation (Scotland) Act, 1854 (17 & 18 Vict. c. 91); Lands Valuation (Scotland) Act, 1857 (20 & 21 Vict. c. 58); Valuation of Lands (Scotland) Amendment Act, 1867 (30 & 31 Vict. c. 80); Valuation of Lands (Scotland) Amendment Act, 1879 (42 & 43 Vict. c. 42); Valuation of Lands (Scotland) Amendment Act, 1887 (50 & 51 Vict. c. 51); Valuation of Land (Scotland) Acts Amendment Act, 1894 (57 & 58 Vict. c. 36); Lands Valuation (Scotland) Amendment Act, 1895 (58 & 59 Vict. c. 41); and Lands Valuation (Scotland) Amendment Act, 1902 (2 Edw. 7, c. 25).

(h) With this provision compare the decisions in *Edinburgh, Perth and Dundee Railway Co. v. Arthur* (1854), 17 D. 252; *North British Railway Co. v. Greig* (1866), 4 M. 645; *Dundee and Arbroath Joint Line Committee v. Assessor of Arbroath* (1883), 11 R. 396; and *Caledonian Canal Commissioners v. Argyll County Council* (1894), 22 R. 149.

Extent of
Act.

27. This Act shall not extend to Ireland.

The Acts constituting the code which governs light railways in Ireland are enumerated in the note to sect. 2 of Tramways Act, 1870.

Definitions.

28. In this Act, unless the context otherwise requires,—

The expression “light railway company” (i) includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by this Act, or who are working the same under any working agreement:

The expression “Clauses Acts”(*k*) means the Sect. 28.
 Lands Clauses Acts(*l*), the Railways Clauses
 Consolidation Act, 1845, and the Railways
 Clauses Act, 1863(*m*), and the Companies
 Clauses Acts, 1845 to 1889(*n*):

The expression “share capital”(*o*) includes any
 capital, whether consisting of shares or of
 stock, which is not raised by means of bor-
 rowing.

(*i*) In sects. 3, 4, 12 (2), 16 (3); see also note (*n*) to sect. 3
 and note (*y*) to sect. 4.

(*k*) In sects. 11 (a) and 12.

(*l*) This expression includes, by Interpretation Act, 1889 (52 &
 53 Vict. c. 63), s. 23 (a) :—

Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18);

Lands Clauses Consolidation Acts Amendment Act, 1860 (23 &
 24 Vict. c. 106);

Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18);

Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15);

and any amending Acts, viz., at present :—

Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict.
 c. 11).

The same expression is defined, for Scotland, by sect. 26 (7).

(*m*) 8 & 9 Vict. c. 20, and 26 & 27 Vict. c. 92, respectively.

(*n*) This expression means, by Short Titles Act, 1896 (59 & 60
 Vict. c. 14) :—

Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16);

Companies Clauses Act, 1863 (26 & 27 Vict. c. 118);

Companies Clauses Act, 1869 (32 & 33 Vict. c. 48);

Companies Clauses Consolidation Act, 1888 (51 & 52 Vict.
 c. 48); and

Companies Clauses Consolidation Act, 1889 (52 & 53 Vict. c. 37).

(*o*) In sects. 3 (1b), 4 (1), and 11 (h).

29. This Act may be cited as the Light Railways Short title.
 Act, 1896.

SCHEDULES.

Section 3.

FIRST SCHEDULE.

MODE OF PASSING SPECIAL RESOLUTIONS.

1. The resolution approving of the intention to make the application must be passed at a meeting of the council.

2. The resolution shall not be passed unless a month's previous notice of the resolution has been given in manner in which notices of meetings of the council are usually given.

3. The resolution shall not be passed unless two-thirds of the members of the council present and voting concur in the resolution.

Compare Tramways Act, 1870, Sched. A., Part III.

Section 12.

SECOND SCHEDULE.

ENACTMENTS RELATING TO SAFETY, &c.

Session and Chapter.	Title or Short Title.	Enactment referred to.
2 & 3 Vict. c. 45.	An Act to amend an Act of the fifth and sixth years of the reign of his late Majesty King William the Fourth relating to highways.	The whole Act.
5 & 6 Vict. c. 55.	The Railway Regulation Act, 1842.	Sections four, five, six, nine, ten.
9 & 10 Vict. c. 57.	An Act for regulating the gauge of railways.	The whole Act.
31 & 32 Vict. c. 119.	The Regulation of Railways Act, 1868.	Sections nineteen, twenty, twenty-two, twenty-seven, twenty-eight, and twenty-nine.
34 & 35 Vict. c. 78.	The Regulation of Railways Act, 1871.	Section five.
36 & 37 Vict. c. 76.	The Railway Regulation Act (Returns of signal arrangements, working, &c.), 1873.	Sections four and six.
41 & 42 Vict. c. 20.	The Railway Returns (Continuous Brakes) Act, 1878.	The whole Act.
46 & 47 Vict. c. 34.	The Cheap Trains Act, 1883.	Section three.
52 & 53 Vict. c. 57.	The Regulation of Railways Act, 1889.	The whole Act.

The reference in the margin should be to sect. 11 (b), as well as to sect. 12. A list of such of the above enactments as are usually applied to light railways of either class will be found in note (y) to sect. 11. (See also the model clauses, *post*, pp. 551, 588.)

THIRD SCHEDULE.

Section 17.

JOINT COMMITTEES.

(a) Any council taking part in the appointment of a joint committee may delegate to the committee any power which the council may exercise for the purpose for which the committee is appointed.

(b) A council shall not be authorised to delegate to a joint committee any power of making a rate or borrowing money.

(c) Subject to the terms of the delegation the joint committee shall have the same power in all respects with respect to any matter delegated to them, as the councils appointing it or any of them.

(d) The members of the joint committee may be appointed at such times and in such manner, and shall hold office for such period, as may be fixed by the councils appointing them :

Provided that a member shall not hold office beyond the expiration of fourteen days after the day for the ordinary election of councillors of the council by which he was appointed, or in Scotland after the day for the ordinary election of councillors of the council of the county in which the district is situated.

(e) The costs of a joint committee shall be defrayed by the councils by whom the committee is appointed, in such proportions as they may agree upon, and in the event of their differing in opinion, as may be determined by the Board of Trade on an application by either council.

(f) When any of the councils joining in the appointment of a joint committee is a county or district council other than a borough council, the accounts of the joint committee shall be audited in like manner and with the like power to the officer auditing the accounts, and with the like incidents and consequences as the accounts of a county council.

(g) The chairman at any meeting of the committee shall have a second or casting vote.

(h) The quorum, proceedings, and place of meeting of a committee, whether within or without the area within which the committee are to exercise their authority, shall be such as may be determined by regulations jointly made by the councils appointing the committee, and in the event of their differing in opinion as may be determined by the Board of Trade on an application by either council.

(i) Subject to those regulations the quorum, proceedings, and place of meeting, whether within or without the area within which the committee are to exercise their jurisdiction, shall be such as the committee direct.

THE
LIGHT RAILWAY COMMISSIONERS
(SALARIES) ACT, 1901.

(1 Edw. 7, c. 36.)

An Act to provide for the Payment of another
of the Light Railway Commissioners.

[17th August, 1901.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :—

Payment of
salary to a
second com-
missioner.
59 & 60 Vict.
c. 48.

1. In addition to the salary directed to be paid by subsection four of section one of the Light Railways Act, 1896, there shall be paid to another of those Commissioners such salary as the Treasury direct, not exceeding one thousand pounds a year, and subsection six of section one of that Act shall apply to any salary so paid.

Short title.

2. This Act may be cited as the Light Railway Commissioners (Salaries) Act, 1901.

THE LIGHT RAILWAYS RULES, 1898.

RULES MADE BY THE BOARD OF TRADE IN SEPTEMBER, 1896, AND MODIFIED IN OCTOBER, 1898, WITH RESPECT TO APPLICATIONS TO THE LIGHT RAILWAY COMMISSIONERS UNDER THE LIGHT RAILWAYS ACT, 1896.

Note.—These rules will regulate the procedure before the Light Railway Commissioners where a scheme for a light railway has been matured and it is intended to make a formal application for an Order.

The Commissioners will at all times be prepared to give every facility in their power for considering and maturing proposals for the construction of light railways to be submitted to them.



Notice of Proposed Application.

1. Notice of intention to apply to the Light Railway Commissioners for an Order authorising a light railway, or for an amending Order (hereinafter referred to as “the notice”), must be published by advertisement in each of two consecutive weeks in the month of May or of November, in at least one local newspaper circulating in the area or part of the area through which it is proposed to make the railway. Copies of such newspaper containing these advertisements must be sent when published to the Light Railway Commissioners and to the Board of Trade (a).

Notice by advertisement.

2. The notice must, in the case of a new railway, describe generally the line of the railway and its termini, the lands proposed to be taken (stating the quantity and the purpose for which it is proposed to take them), and the proposed gauge and motive power of the railway, and in the case of an application for an amending Order (so far as the amendment applied for does not relate to the power to make a new railway) the nature of the proposed amendment. The notice must be subscribed with the name of the person, company, or council responsible for the publication of the notice (hereinafter referred to as “the promoters”); and must name a place where a plan of the proposed works and of the lands to be taken and a book of reference to the plan and a section of the proposed works will be deposited for inspection on or before the last day of the month in which the notice is advertised, and where on or before the same day copies of the draft Order can be obtained on payment of not exceeding one shilling per copy.

Contents of notice.

The notice must state that, in accordance with these Rules,

(a) See sect. 7 (2a) of the Act and *Finchley, Hendon, Edgware and District case* (1899), Rep. VI. 16; *Oxley*, 246, in note (t) to that section. As to advertisements of additional lines undertaken after the local inquiry, see *Middleton case* (1898), Rep. III. 17; *Oxley*, 137, and note (a) to sect. 7.

objections should be made in writing to the Light Railway Commissioners, and a copy sent to the promoters (*b*).

“Gazette”
advertise-
ment.

3. A short advertisement of the intention to apply to the Light Railway Commissioners for an Order authorising a light railway or for an amending Order must also be published in the London or Edinburgh Gazette, as the case may be, during the month in which the notice is advertised.

The advertisement must state the names of the promoters and their solicitors or agents, and in the case of a new railway, the termini of the railway and the names of any counties or parishes through which the railway is to run, and in the case of an amending Order (so far as the amendment applied for does not relate to power to make a new railway), as shortly as possible the nature of the amendment.

Deposit
with local
authorities.

4. Copies of the draft order and of the plan and book of reference and section and of the estimate hereinafter mentioned, must be deposited by the promoters in the month in which the notice is advertised, with the clerk of the council of any county, borough, district, or parish in or through which any part of the railway is proposed to be made; and shall be open to inspection during office hours.

With the above documents there must also be deposited a sheet or sheets of the ordnance map, on the scale of not less than one inch to a mile, with the line of railway and its mile points indicated thereon, so as to show generally the course, length, and direction of the railway (*c*).

Deposits with
Government
Departments.

5. Two copies (*d*) of the draft Order and of all the above documents, must be deposited by the promoters in the month in which the notice is advertised with the Board of Trade, and copies of the notice and draft Order must be deposited with the Treasury, the Board of Agriculture, the Postmaster General, the Commissioners of Customs, the Commissioners of Inland Revenue, the Admiralty, the Home Office, the War Office, the Office of Woods and Forests, and the Office of Works, and with the Secretary for Scotland in the case of proposed railways in Scotland (*e*).

Deposits with
the Fisheries
and Harbour
Department
of the Board
of Trade and
with the
Conservators
of Rivers.

6. In cases where tidal lands within the ordinary spring tides are to be acquired or in any way affected a copy of the plan and section with the ordnance map aforesaid, marked “tidal waters,” shall in the same month in which the notice is advertised be deposited with the Fisheries and Harbour Department of the Board of Trade, and on such documents all tidal waters shall be

(*b*) As to the making of objections, see sect. 7 (3) of the Act.

(*c*) See sect. 7 and notes (*v*) and (*a*) thereto. As to the details of the deposits, see Rules 10 to 23, 30 and 31.

(*d*) One of the copies of the draft Order and documents aforesaid deposited with the Board of Trade will be available for public inspection.

(*e*) See sect. 7 and notes (*v*) and (*a*) thereto, and sects. 4, 5, 6, 19, 20, 21, 26.

coloured blue; and if the plan includes any bridges across tidal waters, the dimensions as regards span and headway of the nearest bridges, if any, across the same tidal waters above and below the proposed new bridge shall be marked thereon.

In cases where the work is to be situate on the banks, foreshore, or bed of any river having a Board of Conservators constituted by or under any Act of Parliament, similar documents shall in the same month be deposited with the Fisheries and Harbour Department of the Board of Trade and with the Conservators of that river; and if the plan includes any tunnel under or bridge over the river, the depth of such tunnel below the bed of the river or the span and headway of such bridge shall be marked thereon.

7. Any objection to an application to the Light Railway Commissioners for an Order authorising a light railway or for an amending Order should be made in writing to the Light Railway Commissioners, and a copy should at the same time be sent to the promoters or their solicitors or agents (*f*). Mode of making objection.

8. Where the promoters propose to take for the purposes of the light railway any land being part of any common as defined by section 21 of the Light Railways Act, 1896, or any easement over or affecting any such common, they must send notice in writing during the month in which the notice is advertised to the Board of Agriculture, describing the common affected and the mode in which it is affected. Notice as to commons.

9. The plan, book of reference, and section referred to in the notice must be deposited by the promoters on or before the last day of the month in which the notice is advertised at the place named in the notice and shall be open to inspection at all reasonable times. Deposit of plans, &c.

The promoters shall supply copies of the draft Order on payment of not exceeding one shilling per copy, at the place named in the notice as the place at which copies can be obtained.

Plans, Book of Reference and Sections.

10. Every plan must be drawn to a scale of not less than four Plans. inches to the mile, and must describe the lands intended to be taken, and the line or situation of the whole of the railway (no alternative line or work being in any case permitted), and the lands in or through which it is to be made, or through which any communication to or from the railway shall be made.

11. Where it is the intention of the promoters to apply for powers to make any lateral deviation from the line of the proposed railway, the limits of such deviation shall be defined on the plan, and all lands included within such limits shall be marked thereon (*g*). As to limits of deviation.

(*f*) See sect. 7 (3) and note (*y*) thereto.

(*g*) As to deviation, see *ante*, p. 484, and the model clause, *post*, p. 556.

- Buildings, &c. on enlarged scale.** 12. Unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every one hundred feet, an enlarged plan shall be added of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden, either in the line of the proposed work, or included within the limits of the said deviation, on a scale of not less than a quarter of an inch to every one hundred feet.
- Distances to be marked.** 13. The distances from one of the termini must be shown in miles and furlongs on the plan, and a memorandum of the radius of every curve not exceeding one mile in length, shall be noted on the plan in furlongs and chains.
- Tunnelling to be marked.** 14. Where tunnelling as a substitute for open cutting is intended, the same shall be marked by a dotted line on the plan, and no work shall be shown as tunnelling in the making of which it will be necessary to cut through or remove the surface soil.
- Diversion of roads, &c.** 15. If it be intended to divert, widen or narrow any public carriage road, navigable river, canal, or railway, the course of such diversion and the extent of such widening or narrowing shall be marked on the plan.
- Case of junctions with other lines.** 16. When a railway is intended to form a junction with an existing or authorised line of railway, the course of such existing or authorised line of railway shall be shown on the deposited plan for a distance of 800 yards on either side of the proposed junction on the same scale as the scale of the general plan.
- Case of rails along road.** 17. If it be intended to lay any part of the railway along a road or street, the plan shall show at what distance from an imaginary line drawn along the centre of such road or street it is proposed to lay the rails; and the widths of such road or street shall at all material points be clearly marked in figures on the plan.
- Book of reference.** 18. The book of reference shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses in the line of the proposed railway or within the limits or deviation as defined on the plan, and shall describe such lands and houses respectively.
- The book of reference shall also contain the name of the road authority of any road or street along which it is proposed to lay any part of the railway (*h*).
- Scale of sections.** 19. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every one hundred feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed railway, the height of every embankment and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the railway or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section) near one of the termini of the railway.

(*h*) As to the correction of errors and omissions in the plans and book of reference, see Railways Clauses Consolidation Acts, 1845 (8 & 9 Vict. cc. 20 and 33), s. 7.

In every section the line of the railway marked thereon shall correspond with the upper surface of the rails.

20. Distances on the datum line shall be marked in miles and furlongs, to correspond with those on the plan; a vertical measure from the datum line to the line of the railway shall be marked in feet and inches, or decimal parts of a foot, at the commencement and termination of the railway, and at each change of the gradient or inclination thereof; and the proportion or rate of inclination between every two consecutive vertical measures shall also be marked.

Vertical measures to be marked at change of gradient.

21. Wherever the line of the railway is intended to cross any public carriage road, navigable river, canal, or railway, the height of the railway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts by which the railway will be carried over the same, shall be marked in figures at every crossing thereof, and where the railway will be carried across any such public carriage road or railway, on the level thereof, such crossing shall be so described on the section, and it shall also be stated if such level will be unaltered.

Height of railway over or depth under surface of roads, &c. to be marked.

22. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any public carriage road or railway which will be crossed by the railway, then the same shall be stated on the section, and each alteration shall be numbered; and cross sections in reference to the numbers, on a horizontal scale of not less than one inch to every three hundred and thirty feet, and on a vertical scale of not less than one inch to every forty feet shall be added which shall show the present surface of such road, canal, or railway, and the intended surface thereof, when altered; and the greatest of the present and intended rates of inclination of the portion of such road or railway intended to be altered shall also be marked in figures thereon, and where any public carriage road is crossed on the level, a cross section of such road shall also be added; and all such cross sections shall extend for two hundred yards on each side of the central line of the railway.

Cross sections in certain cases.

23. Wherever the extreme height of an embankment, or the extreme depth of any cutting, shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures on the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct, or tunnel.

Embankments and cuttings.

24. Where tunnelling, as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, the same shall be marked on the section, and no work shall be shown as tunnelling in the making of which it will be necessary to cut through or remove the surface soil.

Tunnelling and viaduct to be marked.

In case of junctions gradient of existing line to be shown on section.

25. When a railway is intended to form a junction with an existing or authorised line of railway, the gradient of such existing or authorised line of railway shall be shown on the deposited section, and in connexion therewith, and on the same scale as the general section, for a distance of 800 yards on either side of the point of junction (*i*).

Notices to Owners, Lessees, and Others.

Service of notices on landowners and others.

26. In the month in which the notice is advertised the promoters must serve a notice on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of all lands intended to be taken or being within the limits of deviation shown on the deposited plan, describing in each case the particular lands intended to be taken or being within such limits, and inquiring whether the person so served assents or dissents to the taking of such lands, and requesting him to state any objections he may have to such lands being taken.

Every such notice shall be as nearly as may be in the form set out in the schedule to these rules (*k*).

Notice to owners of railway, &c.

27. In the month in which the notice is advertised the promoters must also serve a notice of the intended application on the owner, or reputed owner, lessee, or reputed lessee, of any railway, tramway, or canal which will be crossed or otherwise interfered with by the proposed railway; and on the road authority (where other than a county, borough, district, or parish council) of any road or street along which it is proposed to lay any rails, or which will be otherwise interfered with by the proposed railway; and such notice shall state the place or places where a plan or plans of the proposed railway has or have been or will be deposited.

Notice of relinquishment of works.

28. Where an amending Order proposes to authorise the promoters to vary or to relinquish the whole or any part of a railway authorised by a former Order, the promoters must in the month in which the notice is advertised serve notice of the proposal on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of the lands in which any part of the said railway is situate (*l*).

Notice of repeal of protective provisions.

29. Where an amending Order proposes to repeal or alter any provision contained in a former Order for the protection or benefit of any person, public body, or company specifically named, the promoters must in the month in which the notice is advertised serve notice of the intention to repeal or alter such provision on every such person, public body, or company (*m*).

(*i*) See sect. 23 of the Act.

(*k*) See sect. 7 (2b) and note (*s*) thereto, and, as to service, Rule XXIX. As to notice, where the scheme has been modified, see *Middleton case* (1899), Rep. III. 17; Oxley, 137; *Trent Valley case* (1898-9), Rep. IV. 29, V. 41; Oxley, 65, and note (*a*) to sect. 7.

(*l*) As to service, see Rule XXXV.

(*m*) As to amending Orders, see sect. 24 and notes thereto.

Estimate.

30. An estimate of the expenses of the proposed railway (including the expense of acquiring land and all incidental expenses) must be made and signed by the person making the same. Estimates.

31. The estimate shall be in the following form or as near thereto as circumstances may permit:—

Estimate of the proposed Light Railway.

Lines No.			Whether Single or Double.	
miles. fgs. chs.				
Length of Line				
Gauge				
	Cubic Yards.	Price per Yard.	£ s. d.	£ s. d.
Earthworks:				
Cuttings—Rock				
Soft Soil.....				
Roads.....				
Total.....				
Embankments, including roads			Cubic Yards	
Bridges—Public roads.....			Number	
Accommodation bridges and works				
Viaducts.....				
Culverts and drains				
Metallings of roads and level crossings.....				
Gatekeepers' houses at level crossings				
Permanent way, including fencing:				
miles. fgs. chs.			Cost per mile. £ s. d.	
at				
Permanent way for sidings, and cost of junctions				
Stations				
Contingencies			Per cent.	
Land and buildings:				
a. r. p.				
Total.....			£	

The same details for each branch, and general summary of total cost.

Application to the Commissioners.

Documents to
accompany
application.

32. Every application to the Commissioners for an Order must be made in the month of May or of November, being the month in which the notice is advertised, and must be in the case of a corporate body under the seal of such body, and in any other case signed by the promoter or promoters, or if there are more than two then by any three of them, and must be accompanied by—

- (a) three copies of the draft Order and of each of the documents required by these rules to be deposited (*n*) ;
- (b) a statement as to the proposed gauge and motive power of the railway ;
- (c) a list with their postal addresses of the owners, or reputed owners, lessees, or reputed lessees, and occupiers on whom notices have been served (*o*) ;
- (d) a list of the county borough district and parish councils in or through any part of whose county district or parish any part of the railway is proposed to be made, and a statement whether or not they have intimated assent to or dissent from the proposal (*p*) ;
- (e) a list of the railway, tramway, or canal companies (if any) on whom any notice has been served under these rules, and a statement whether or not they have intimated assent to or dissent from the proposal (*q*) ;
- (f) a statement whether any consent of the Board of Agriculture required to any grant of land or to the acquisition of any common land proposed to be authorised by the draft Order has been obtained (*r*) ;
- (g) a statement whether it is proposed that the council of any county borough or district shall expend or advance any money, and, if so, of the nature and amount of such expenditure or advance (*s*) ;
- (h) a statement whether it is proposed to apply to the Treasury for the advance of any money, and, if so, of the amount of the advance sought (*t*) ;
- (i) a certificate that a fee of 50*l.* has been paid to the Board of Trade (*u*).

Documents to
accompany or
follow appli-
cation.

33. A statement so far as can be made whether the owners or reputed owners, lessees or reputed lessees and occupiers, on whom

(*n*) See Rule IV.

(*o*) See Rules XXVI., XXVIII. and XXIX.

(*p*) See sect. 7 (1) and note (*q*) thereto and Rule XXVII.

(*q*) See Rule XXVII.

(*r*) See sects. 19 and 21.

(*s*) See sect. 3.

(*t*) See sects. 4 and 5.

(*u*) See Rule XXXVI. As to applications in general, see sects. 2 and 7.

notices have been served in each case assent, dissent, or are neuter, must be deposited with the Commissioners on or before the last day of the month after the month in which the application was made; and a certificate, in the case of an application by an existing company, that the members of the company have assented to the application by such a resolution as is required by the Standing Orders of Parliament in the case of an application to Parliament by such company must be deposited with the Commissioners before their local inquiry is held (x).

General Provisions as to Notices.

34. Notices and other such documents under these rules may be in writing or print, or partly in writing and partly in print; and shall be sufficiently authenticated if signed by the clerk of the council, or by some principal officer of the company, or by the promoter or promoters, or by the solicitor or parliamentary agent.

Authentica-
tion, &c. of
notices.

35. Notices and any other documents required or authorised to be served under these rules may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises; or if there is no person on the premises who can be so served, then by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice or other document was properly addressed and put into the post.

Service of
notices.

Any notice by these rules required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given without further name or description.

Fees.

36. Before lodging any application with the Commissioners a fee of 50*l.* must be paid by the promoters to the Board of Trade, by cheque in favour of an Assistant Secretary of the Board of Trade.

Fee payable
to Board of
Trade.

(x) See sect. 7 (2b) and note (s) thereto. As to the "Wharmcliffe meeting," see the Standing Orders, *ante*, p. 397, and the recital in *Coppyshall Order*, 1900. Rep. IV. 13.

General.

37. All communications to the Commissioners should be on foolscap paper and written on one side only, and should be addressed to—

The Secretary,

Light Railway Commission (*y*).

38. In the case of an application for an amending Order, such of the requirements of these rules as are inapplicable will be dispensed with (*z*).

39. These rules shall remain in force until modified by the Board of Trade.

COURTENAY BOYLE,

Secretary.

Board of Trade,

7, Whitehall Gardens, S.W.

October, 1898.

SCHEDULE.

FORM OF NOTICE TO LANDOWNERS AND OTHERS.

SIR,—We beg to inform you that application is intended to be made to the Light Railway Commissioners for an Order authorising a light railway from to , and that the property mentioned in the annexed schedule or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said railway, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of yards on either side of the said line which will be applied for.

We also beg to inform you that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the clerks of the [*specify county and other councils as the case may be*] on or before the last day of May [*or November*] and that copies of so much of the said plan and section as relates to the [*parish*] in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the [*clerk of the parish, district, or borough council*] on or before the day of on which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report whether you assent to or dissent from the proposed undertaking, you will oblige us by writing your answer of assent or dissent in the form left herewith, and by stating any objections you may have to your property being taken, and returning the same to us with your signature on or before the day of next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, &c.

(*y*) NOTE.—The present address of the Light Railway Commission is 54, Parliament Street, London, S.W.

(*z*) See sect. 24 and note (*k*) thereto.

Schedule referred to in the foregoing notice describing the property therein alluded to:—

—	Parish Township, Townland or extra- parochial Place.	Number on Plans.	Descrip- tion.	Owner.	Lessee.	Occupier.
Property on the line of the proposed work, or within the limits of the deviation intended to be applied for.						

I, the undersigned, assent to [dissent from] my property being taken for the proposed work [and my objections are that].

THE LIGHT RAILWAYS (COSTS) RULES, 1898.

[*Similar Rules were made for Scotland on October 29, 1898, under the name of the Light Railways (Costs) (Scotland) Rules, 1898. The points in which they differ from the present Rules (and as to which see sect. 26 of the Act) are shown below in italics within square brackets.*]

DATED MAY 27 [*October 29*], 1898, AND MADE BY THE BOARD OF TRADE, WITH THE CONCURRENCE OF THE LORD CHANCELLOR [*Lord President of the Court of Session*], PURSUANT TO THE THIRTEENTH SECTION [*sections 13 (2) and 26 (4)*] OF THE LIGHT RAILWAYS ACT, 1896 [*59 & 60 Vict. c. 48*].

The following rules, and the scales of costs contained therein, shall apply to the allowance and taxation as against a light railway company of all costs and charges of a claimant in an arbitration.

1. Where the compensation awarded by the arbitrator [*arbiter*] to the claimant does not exceed the sum specified in the first column of the Scale No. 1 hereunder contained, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to [*memorials for*], or attendance of, counsel shall be allowed.

2. Where the compensation awarded by the arbitrator [*arbiter*] exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed and (if necessary) taxed, in accordance with the provisions of the Scale No. 2 hereunder contained, and no other costs or charges other than those specified in such scale, or allowed in accordance therewith, shall be allowed.

3. Where the compensation awarded by the arbitrator [*arbiter*] exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be taxed and allowed in

accordance with the provisions of the Scale No. 3 hereunder contained, and no other costs or charges other than those specified in such scale, or allowed in accordance therewith, shall be allowed.

4. For the purpose of ascertaining the scale on which the costs of the claimant in the arbitration are to be allowed, the amount of compensation awarded by the arbitrator [*arbiter*] shall comprise and include the sum or sums awarded by the arbitrator [*arbiter*] in respect of any lands or interest in lands taken for or injuriously affected by the execution of works under the Act, or any Order made under the Act, and also all such amounts (if any) as may be deducted by the arbitrator [*arbiter*] in arriving at such sum or sums in respect of the permanent increase of value to the remaining and contiguous lands and hereditaments of the same proprietor, and the expenses of any accommodation works which may be prescribed by the award or which the light railway company may have agreed to construct for the protection or advantage of the claimant; and the arbitrator [*arbiter*] shall, if required so to do by either party to the arbitration, certify the amounts of such deductions and expenses.

See sect. 13 of the Act and notes thereto.

5. So much of the First Schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these rules apply. [*The preceding sentence is omitted in the Scots Rules.*] In any case in which the arbitrator [*arbiter*] taxes or settles the amount of costs to be paid to the claimant in the arbitration, these rules and the scales hereunder contained, shall apply to and govern such taxation and settlement of such costs by the arbitrator [*arbiter*].

6. These rules and the scales of costs contained herein shall not apply to the fees or remuneration properly payable to or charged by the arbitrator [*arbiter*], which fees, if and when paid by the claimant, shall be recoverable by him from the party who is directed or liable to pay the same.

7. In these rules and scales of costs :—

- (1.) “The Act” means the Light Railways Act, 1896 [59 & 60 Vict. c. 48].
- (2.) “The arbitrator” means an arbitrator appointed under the thirteenth section of the Act.

[“The *arbiter*” means an *arbiter* appointed under sect. 13 as made applicable to Scotland by sub-sect. (3) of sect. 26 of the Act.]

- (3.) “Taxing officer” includes the arbitrator [*arbiter*] when costs are taxed and settled by him.
- (4.) “Light railway company” has the same meaning as such expression has in the Act.

8. These rules shall commence and come into operation on the 27th day of May, 1898, and may be cited as the Light Railways (Costs) [(*Scotland*)] Rules, 1898.

Scale No. 1.

Scale of fixed costs where the compensation awarded does not exceed 300*l*.

Compensation awarded.	Amount of costs other than for Witnesses.	Costs of attendance of Witnesses.
	£ s. d.	£ s. d.
Any sum not exceeding fifty pounds	3 3 0	2 2 0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds	5 5 0	3 3 0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds :— For every fifty pounds or part of fifty pounds exceeding one hundred pounds the following sums in addition to those prescribed for compensation which exceeds fifty pounds.....	2 2 0	1 1 0

Scale No. 2.

Costs where the compensation awarded exceeds 300*l*. but does not exceed 500*l*.

- (a) The amount payable to the claimant for the costs of the arbitration shall be the sum of 20*l*., which sum shall include all charges and disbursements of every kind, except those hereinafter specially mentioned.
- (b) In addition to the said sum of 20*l*., there shall be allowed to the claimant the charges and expenses of and incurred in obtaining the evidence and attendance of one expert witness as to the value of the claimant's lands, or interest in land, or the amount of compensation to which the claimant is entitled : which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale 3, hereinafter contained.
- (c) If counsel is employed by the claimant, there shall be allowed to him, in addition, for preparing and delivering briefs [*memorials*] to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

Scale No. 3.

Scale of costs and allowance where the compensation exceeds five hundred pounds :—

- | | |
|--|---------|
| | £ s. d. |
| 1. Instructions for claim and attendances on owner or
claimant in respect thereof | 1 1 0 |

	£	s.	d.
2. Correspondence and attendance on the light railway company's solicitors thereon, including drawing and copy claim	1	1	0
3. Attendances on them agreeing upon arbitrator [<i>arbiter</i>] or that the arbitrator [<i>arbiter</i>] should be appointed by the Board of Trade	0	13	4
4. Attending on each witness (of two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator [<i>arbiter</i>] is a surveyor on one witness only	0	13	4
5. Attending on the arbitrator [<i>arbiter</i>] and on the company's solicitor arranging appointment for the day of hearing	0	13	4
6. Notice to each witness to attend	0	5	0
7. If a view is reasonably necessary attendances on arbitrator [<i>arbiter</i>] and company's solicitor arranging for view	0	13	4
8. Attending view with them	3	3	0
9. Paid travelling expenses			
10. If counsel employed, instructions to counsel to attend view	0	6	8
11. Paid his fee and clerk	5	10	0
12. Instructions for attending before the arbitrator [<i>arbiter</i>] and to conduct the claimant's case	2	2	0
13. If counsel employed in lieu of last item, instructions for brief [<i>preparing for proof</i>]	2	2	0
14. Drawing case and minutes of evidence, at per folio, 1s. [<i>sheet</i> , 6s.]; and if counsel attending, brief copy [<i>copy</i>] for counsel, at per folio, 4d. [<i>sheet</i> , 1s. 6d.] .			
15. Paid counsel's fee			
16. Attending him [<i>charge according to amount of counsel's fees</i>].....	0	6	8
17. Paid counsel's conference [<i>consultation</i>] fee	1	6	0
18. Attending conference [<i>consultation</i>]	0	13	4
19. Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk)..	5	5	0
20. If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor.	1	1	0
Ditto ditto of clerk ..	0	15	0
(And for travelling expenses the sum actually paid.)			
21. If reference not concluded, for each subsequent day the same charges.			
22. If counsel in attendance, solicitor attending each day on reference	3	3	0
23. And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid).....	1	1	0

THE LIGHT RAILWAYS (COSTS) RULES, 1898.

24. Paid witnesses (according to the scale in use by the Masters in the Queen's Bench Division [<i>table of fees allowed by the Act of Sederunt, 15th July, 1876</i>]).	£	s.	d.
25. Drawing bill of costs and copy for taxing, at per folio, 8d. [<i>sheet, 2s.</i>].			
26. Copy for the railway company's solicitor, at per folio, 4d. [<i>sheet, 2s.</i>].			
27. Notice of taxing	0	4	0
28. Attending taxing	0	13	4
29. Paid taxing (the fee payable in the Queen's Bench Division on taxing costs [<i>on the Auditor of the Court of Session taxing costs</i>]).			
30. Letters and messengers	1	1	0
31. In agency cases for correspondence between solicitor and London [<i>Edinburgh</i>] agent	1	1	0
In other than ordinary cases the taxing officer may increase or diminish any of the above charges if for any special reasons he shall think fit.			

CHAS. T. RITCHIE,
President of the Board of Trade.

I concur,

HALSBURY, C. [*J. P. B. Robertson, Lord President of the Court of Session*].

Dated the 27th day of May [*29th October*], 1898.

FORM OF PROOFS

OF COMPLIANCE WITH THE LIGHT RAILWAYS ACT AND RULES.



PROOFS

NOTE—

1. *These proofs should be filled up by the promoters or their agents.*

The particulars not applicable should be struck out and marked accordingly.

2. *Proof should be given in the manner specified in the margin.*

3. *Statutory declarations must be stamped.*

Required by the Light Railway Commissioners of compliance with certain of the provisions of the Light Railways Act, 1896, and the Rules made by the Board of Trade with respect to applications to the Commissioners for Orders authorising Light Railways.

I. Application for an Order to authorise the _____ Light Railway.

II. Promoters : _____.

Notice by Advertisement in May [November]. Public Notice of the Application to the Commissioners.

Personally by production of the documents.

III. _____ will prove the publication by advertisement (a) in each of two consecutive weeks in May [November] in at least one local newspaper circulating in the area or part of the area through which it is proposed to make the railway (viz., The _____ of the _____ and _____ May [November], 190 _____) of notice of intention to apply to the Commissioners for an Order authorising the light railway; and will produce a copy of each of those issues of the said newspaper.

Act, sect. 7
(2) (a).
Rules 1 and 2.

(b) In the “London” or “Edinburgh” Gazette, as the case may be, in the month of May [November], 190 _____, of the intention to make the application. Rule 3.

Act, sect. 7
(2) (a).
Rule 2.
Rule 9.

IV. ————— will prove that on and after the day of May [November], 190 , at the place named in the said notice by advertisement, a plan of the proposed works and of the lands to be taken and a book of reference to the plan and a section of the proposed works (corresponding exactly with the plan, book of reference and section which accompanied the application) could be seen at all reasonable hours, and copies of the draft Order could be obtained on payment not exceeding one shilling per copy by any person applying.

By affidavit or statutory declaration.

Notice to Owners and others, Railway Owners and others, and Road Authorities, in May [November]. Consultation with Owners and others, and Local Authorities.

Act, sect. 7
(2) (b).
Rule 26.
Rule 32 (c).

V. ————— will prove the service, during the month of May [November], on every person mentioned in the list of owners or reputed owners, lessees or reputed lessees, and occupiers which accompanied the application, of the notice required to be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands intended to be taken or within the limits of deviation; that such notice in each case was as nearly as might be in the form set out in the Schedule to the Rules, correctly described the particular lands intended to be taken or within such limits, inquired whether the person served assented to or dissented from the taking of such lands, and requested him to state any objections he might have to such lands being taken; and will produce a certified copy of the form of notice used.

By affidavit or statutory declaration.

Rule 27.
Rule 32 (e).

VI. ————— will prove the service, during the month of May [November] on the owner or reputed owner, lessee or reputed lessee of every railway, tramway or canal mentioned in the list of railway, tramway or canal companies which accompanied the application, of notice of the intended application; and that such notice stated the place or places where a plan or plans of the proposed railway had been or would be deposited.

By affidavit or statutory declaration.

Rule 27.

VII. ————— will prove the service, during the month of May [November] on every road authority (other than a county, borough, district or parish council) of a road or street along which it is proposed to lay any rails or which will be otherwise interfered with by the proposed railway, of notice of the intended application; and that such notice stated the place or places where a plan or plans of the proposed railway had been or would be deposited.

By affidavit or statutory declaration.

VIII. ————— will prove that on the , at the place or places named in such notice to owners or reputed

By affidavit or statutory declaration.

owners, lessees or reputed lessees of railways, tramways or canals, and to road authorities, a plan or plans of the proposed railway (corresponding exactly with the plan which accompanied the application) was or were deposited for inspection.

By affidavit or statutory declaration.

IX. ————— will prove that all reasonable steps have been taken for consulting the owners and occupiers of the land it is proposed to take; viz., by —————. Act, sect. 7 (1).

By affidavit or statutory declaration.

X. ————— will prove that all reasonable steps have been taken for consulting the local authorities, including road authorities, through whose areas the railway is intended to pass; viz., by —————. Act, sect. 7 (1).

Deposits with local authorities and Government Departments in May [November].

By affidavit or statutory declaration.

XI. ————— will prove that copies of the draft Order, plan, book of reference, section, estimate, and sheet or sheets of the ordnance map with the line of railway and its mile points indicated thereon were deposited for inspection with the clerk of every county council in or through whose county any part of the railway is proposed to be made, during the month of May [November], viz., on the May [November] with the clerk of the —————. Rule 4.

By affidavit or statutory declaration.

XII. ————— will prove that copies of the draft Order, estimate and sheet or sheets of the ordnance map with the line of railway and its mile points indicated thereon and of the plan, book of reference, and section, or so much thereof as relates to the particular area of each borough, district or parish council, were deposited for inspection with the clerk of every borough, district and parish council in or through whose borough, district or parish any part of the railway is proposed to be made, during the month of May [November], viz., on the May [November] with the clerk of the —————. Rule 4.

By affidavit or statutory declaration.

XIII. ————— will prove that two copies of the draft Order, plan, book of reference, section, estimate and sheet or sheets of the ordnance map with the line of railway indicated thereon were deposited on the May [November] with the Board of Trade; and that the copies of the notice and draft Order were deposited with the Treasury, the Board of Agriculture, the Postmaster-General, the Commissioners of Customs, the Commissioners of Inland Revenue, the Admiralty, the Home Office, the War Office, the Office of Woods and Forests, and the Office of Works, and in the case of a proposed railway in Scotland with the Secretary for Scotland, during the month of May [November], viz., on the May [November] with —————. Rule 5.

- Rules 6 and 8. XIV. ————— will prove that the provision of the Rules as to “Deposits with the Fisheries and Harbour Department of the Board of Trade and with the Conservators of Rivers” and as to “Notice as to Commons” have been complied with. *By affidavit or statutory declaration.*

Application to the Commissioners in May [November].

- Rules 10-17.
Rules 19-25.
Rule 4. XV. ————— will prove that the plans, sections, and map which accompanied the application have been prepared in accordance with the Rules. *By affidavit or statutory declaration of the Engineer.*
- Rule 18. XVI. ————— will prove that the book of reference which accompanied the application contains the names of the owners or reputed owners, lessees or reputed lessees and occupiers of all lands and houses in the line of the proposed railway or within the limits of deviation as defined on the plan; and correctly describes such lands and houses respectively. *By affidavit or statutory declaration.*
- Rule 18. XVII. ————— will prove that the said book of reference contains the name of the road authority of any road or street along which it is proposed to lay any part of the railway. *By affidavit or statutory declaration.*
- Rule 30. XVIII. ————— will prove that the estimate which accompanied the application has been made by the person signing the same; and includes the expense of acquiring land and all incidental expenses. *By affidavit or statutory declaration of the Engineer or other person signing the estimate.*
- Rules 32 (c)
and 26. XIX. ————— will prove that the list of owners or reputed owners, lessees or reputed lessees, and occupiers which accompanied the application contains the names and postal addresses of every owner or reputed owner, lessee or reputed lessee, and occupier of lands intended to be taken or within the limits of deviation. *By affidavit or statutory declaration.*
- Rule 32 (d). XX. ————— will prove that the list of county, borough, district and parish councils which accompanied the application contains the names of every county, borough, district and parish council in or through any part of whose county, borough, district, or parish any part of the railway is proposed to be made; and that the statement accompanying such list is a complete statement whether or not in each case such county, borough, district and parish councils have intimated assent to or dissent from the proposal. *By affidavit or statutory declaration.*
- Rules 3 (c)
and 27. XXI. ————— will prove that the list of railway, tramway or canal companies which accompanied the application to the Commissioners contains the name of every railway, tramway or canal company upon whom any notice has been served under the Rules, and that the statement accompanying such list is a complete statement whether or not in each

case such companies have intimated assent to or dissent from the proposal.

*By affidavit or
statutory de-
claration.*

XXII. ————— will prove that the statement whether any consent of the Board of Agriculture, required to any grant of land or to the acquisition of any common land proposed to be authorised by the draft Order, has been obtained, which accompanied the application to the Commissioners, is a complete statement referring to every case in which such consent is necessary.

Rule 32 (f).
Act, sects. 19
and 21.

LIGHT RAILWAY COMMISSION,
54, Parliament Street, S.W.
November, 1899.

PRECEDENT OF AN ORDER FOR A LIGHT RAILWAY OF CLASS A.

(See note (*d*) to sect. 1 of the Act.)

[NOTE.—No model form of Order is issued by the Commissioners or the Board of Trade; this and the following forms have therefore been compiled from recent Orders.]

THE LIGHT RAILWAYS ACT 1896. — LIGHT RAILWAY ORDER 19 .

ORDER AUTHORISING THE CONSTRUCTION OF A LIGHT RAILWAY IN THE COUNTIES OF — FROM — TO —.

Preamble. WHEREAS and in pursuance of the Light Railways Act 1896 duly made in an application (hereinafter referred to as “the application of 19 ”) to the Light Railway Commissioners for an Order to authorise the construction of the light railways hereinafter described [or of light railways including the light railways hereinafter described] [and also made in an amending application (hereinafter referred to as “the application of 19 ”) for an Order to authorise additional light railways including the light railways hereinafter described as railways Nos. respectively] (*a*).

[Additional Powers.—And whereas the said have with the consent of the local and road authorities applied for powers to construct an additional line of railway or thereabouts in length in (being the railway hereinafter described and numbered under the heading of the second application) and have amended the plans sections

(*a*) See sect. 24 of the Act and note (*a*) to sect. 7.

and book of reference originally deposited in respect of the second application by the addition of further plans sections and book of reference in respect of the said additional line of railway and have deposited the same with the Board of Trade and have given due notice thereof by advertisement and no objection thereto has been received by the said Commissioners] (b).

[**Wharncliffe Meeting.**—*And whereas the proprietors of the company at a meeting specially called for the purpose on the day of at which the draft Order was submitted to them duly assented to the making of the said application*] (c).

[**Advances by Local Authorities.**—*And whereas the county council of (hereinafter referred to as “the county council”) and the mayor aldermen and burgesses of the borough of (hereinafter referred to as “the corporation”) and the district council of have in pursuance of special resolutions respectively passed in manner directed by the first schedule of the Light Railways Act 1896 applied to the Commissioners for authority to advance for the purpose of the light railway sums not exceeding in the whole six thousand pounds eight thousand pounds sixteen hundred pounds and five hundred pounds respectively And whereas the proposed light railway will be either wholly or partly outside the area of each of the local authorities [excepting the county council] who have agreed to apply for power to advance money for the purpose of the light railway and in accordance with section three of the Light Railways Act 1896 it has been proved to the Board of Trade in the case of each of those authorities that the advance by the authority is expedient in the interests of the area of the authority and the Board are also of opinion that in the case of each authority the amount of the advance limited by this Order will not exceed such amount as will bear due proportion to the benefit which may be expected to accrue to the area of the authority from the construction and working of the light railway*] (d).

[**Treasury Grant.**—*And whereas the Treasury have agreed subject to the fulfilment of certain conditions to grant the sum of seven thousand pounds for the said purpose And whereas the Railway Company have agreed to construct and work the said light railway in accordance with the provisions in that behalf in this Order contained*] (e).

[**Common Lands.**—*And whereas certain lands described as common lands are in the said applications proposed to be taken for the purpose of the said light railways And whereas it is provided in the said Act that no such lands shall be taken except with the consent of the Board of Agriculture And whereas such consent has been given subject to*

(b) See note (a) to sect. 7 of the Act.

(c) See Light Railways Rule XXXIII. and note thereto.

(d) See sects. 53a to 53j of this Order.

(e) See sect. 5 of the Act and notes thereto, and sect. 53j of this Order.

the provisions hereinafter contained in relation to the taking of common lands](e).

Now we the Light Railway Commissioners being satisfied after local inquiry of the expediency of granting the said application[s] do in pursuance of the said Act and by virtue and in exercise of the powers thereby vested in and of every other power enabling us in this behalf ORDER as follows :—

PRELIMINARY.

Short title.

1. This Order may be cited as “The Light Railway Order 19 ” and shall come into force on the date on which it is confirmed by the Board of Trade and that date is hereinafter referred to as “the commencement of this Order.”

Interpretation.

2. Words and expressions to which by the principal Act or any Acts in whole or in part incorporated with this Order meanings are assigned have in this Order (unless the context otherwise requires) the same respective meanings and in this Order—

The expression “the company” means the company incorporated by this Order [*or the Company*];

The expression “the principal Act” means the Light Railways Act 1896;

The expression “the railway” means the railways and works by this Order authorised or (as the case may be) any part thereof and the expression “the undertaking” means the undertaking by this Order authorised (*f*);

The expressions “the plan” “the section” and “the book of reference” mean respectively the plan section and book of reference deposited in respect of the application for this Order with the Board of Trade and signed by an Assistant Secretary of the Board of Trade;

The expression “road authority” means the council of any county urban district or rural district commissioners trustees or other body or persons who are charged with the duty of maintaining or repairing any public road;

The Interpretation Act 1889 applies for the purposes of this Order as if it were an Act of Parliament.

Incorporation of Acts.

3.—(1.) Subject to the provisions of this Order the Companies Clauses Consolidation Act 1845 Part I. (relating to cancellation and surrender of shares) and Part III. (relating to debenture stock) of the Companies Clauses Act 1863 as amended by subsequent Acts the Lands Clauses Acts as varied by the principal Act the Railways Clauses Consolidation Act 1845 (except the sections thereof numbered respectively 11 to 15 25 to 29 46 to 48 all included 59 60 63 and 64) and sects. 7 to 12 both included and Part III. (relating to working agreements) of the Railways Clauses Act 1863 are hereby

(*e*) See sect. 21 of the Act and notes thereto.

(*f*) See note (*e*) to sect. 43 of Tramways Act, 1870.

incorporated with this Order and sect. 19 of the Regulation of Railways Act 1868 and the Regulation of Railways Act 1889 (except paragraphs (a) and (b) of sect. 1 and sect. 4) are hereby made applicable to this Order.

(2.) In the construction of the incorporated provisions of the Railways Clauses Consolidation Act 1845 and the Railways Clauses Act 1863 the following variations in addition to those enacted by the principal Act shall have effect for the purpose of this Order (that is to say):—

(a) A reference in those Acts to the said Act of 1845 shall be construed as a reference to the sections thereof incorporated with this Order and a reference in those Acts to the Lands Clauses Consolidation Act 1845 shall be construed as a reference to the Lands Clauses Consolidation Act 1845 as varied by the principal Act;

(b) Sects. 7 8 9 10 and 162 of the Railways Clauses Consolidation Act 1845 shall be read and have effect as if the “clerk of the County Council of the County of ” had been referred to therein instead of the clerks of the peace for the several counties in or through which the railway is intended to pass;

(c) Sects. 18 to 23 both included of the Railways Clauses Consolidation Act 1845 shall have effect as if any local authority were included within the meaning of the words “company or society” used therein except that any penalties recovered under sect. 23 aforesaid shall be appropriated to that fund of the local authority to which their revenues in respect of water or gas (as the case may be) are appropriated;

(d) Any matter with respect to—

The construction of the railway and the works connected therewith;

The temporary occupation of lands near the railway during the construction thereof;

The crossing of roads or other interference therewith;

Works for the accommodation of lands adjoining the railway; and

Mines lying under or near the railway

which under the provisions of the Railways Clauses Consolidation Act 1845 may be settled by arbitration or determined or ordered by a justice or by two justices may be referred to and shall be determined by arbitration under this Order (g). •

(g) For the Sects equivalents of the Clauses Acts, see sect. 26 (7) of the Act and notes thereto.

For the variations of the Lands Clauses Acts, see the Act, sects. 11 (a), 13 (1) and 14, and notes.

As to the incorporation of the Clauses Acts, see sect. 11 (a) of the Act.

As to the incorporation of the other Acts mentioned in this section, see the Act, sect. 11 (b), and Sched. II., and notes.

MODEL LIGHT RAILWAY ORDER (CLASS A.).

INCORPORATION OF COMPANY (*h*).

Company
incorporated.

4. A., B., C. [*or the* Company] and all other persons and corporations who have already subscribed to or shall hereafter become proprietors in the undertaking and their executors administrators successors and assigns respectively are hereby united into a company for the purpose of making and maintaining the railway and for other the purposes of this Order and for those purposes are hereby incorporated by the name of the “ Light Railway Company ” and by that name shall be a body corporate with perpetual succession and a common seal and with power to purchase take hold and dispose of lands and other property for the purposes of this Order.

First and
subsequent
meetings.

5. The first ordinary meeting of the company shall be held within six months after the commencement of this Order and the subsequent ordinary meetings of the company shall be held once or more often in every year as the directors may appoint.

Quorum for
a general
meeting.

5a. The quorum for a general meeting of the company whether ordinary or extraordinary shall be *five* shareholders present in person or by proxy holding together not less than *one-twentieth* of the share capital of the company.

Number of
directors.

6. The number of the directors shall be *five* but the company may vary the number provided that the number be not less than *three* nor more than *seven*.

Qualification
of directors.

7. The qualification of a director shall be the possession in his own right of not less than *two hundred and fifty (i)* pounds in the share capital of the company.

Quorum of
directors.

8. The quorum of a meeting of the directors shall be *three*.

First
directors.

9. A., B., C. [*or A. and* other persons to be nominated by him] shall be the first directors of the company and shall continue in office until the first ordinary meeting held after the commencement of this Order.

At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Order or nominated as aforesaid or any of them or may elect a new body of directors or directors to supply the place of those not continued in office the directors appointed by this Order or nominated as aforesaid being if they continue qualified eligible for re-election. At the first ordinary meeting to be held in every year after the first ordinary meeting the shareholders present in person or by proxy shall (subject to the power hereinbefore contained for varying the number of the directors) elect persons to supply the places of the directors then retiring from office agreeably to the provisions of the Companies Clauses Consolidation Act 1845 (*k*) and the several persons elected at any such meeting being neither removed nor disqualified

(*h*) See sect. 11 (*e*) of the Act and note (*c*) thereto.

(*i*) See note (*c*) to sect. 11 of the Act.

(*k*) In Scotland the Companies Clauses Consolidation (Scotland) Act, 1845.

nor having died or resigned shall continue to be the directors until others are elected in their stead in manner provided by the same Act.

[9a.—(1.) *If the county council or the corporation under the powers given by this Order advance to the company as part of the share capital of the company sums to the amount of pounds or to the amount of pounds respectively the county council or the corporation may so long as they continue to hold shares to such amounts respectively be represented in the case of the county council by directors and in the case of the corporation by directors in addition to the ordinary directors of the company;*

*Directors for
County Council
of and
Corporation
of .*

(2.) *Any director so representing the county council or the corporation must be a member of the county council or of the corporation respectively and may be appointed by the county council and the corporation in such manner for such period and subject to such conditions as the county council and the corporation may determine and shall not be subject to the provisions regulating the term of office retirement qualification and election of ordinary directors;*

(3.) *The county council and the corporation shall give notice in writing to the company of every appointment of a director made by them as aforesaid.]*

RAILWAYS AUTHORISED.

10. Subject to the provisions of this Order the company may make and maintain in the lines and according to the levels shown on the plan and section the railways hereinafter described with all proper and sufficient rails sidings junctions turntables bridges culverts drains viaducts stations approaches roads yards buildings and other works and conveniences connected therewith.

*Power to
make rail-
ways.*

The said railways are:—

[10a. *Subject to the provisions of the Railway Act so far as the same are consistent with this Order the company may convert the gauge of the existing railway to a gauge of feet inches and in connection with such conversion may with all other necessary works and conveniences make and maintain in the lines and according to the levels shown on the plan and section the works hereinafter described with all proper approaches works and conveniences connected therewith and may enter upon take and use such of the lands delineated upon the plan and described in the book of reference as may be required for those purposes (that is to say):—*

*Power to con-
vert gauge of
existing rail-
way and to
construct works
in connection
therewith.*

The company may—]

[10b.—(1.) *The existing railway may be worked as a light railway under the principal Act.*

*Power to work
existing rail-
way as a light
railway.*

(2.) *The Clauses Acts as defined in and the enactments set out in the Second Schedule to the principal Act except so far as the same are incorporated with or made applicable to this Order shall cease to apply to the existing railway when worked as a light railway as aforesaid.]*

Gauge of railway and motive power.

11. The railway shall be constructed on a gauge of (l) and the motive power shall be steam or such other motive power as the Board of Trade may approve.

LANDS (m).

Power to take lands.

12. Subject to the provisions of this Order the company may enter upon take and use such of the lands shown on the plan and described in the book of reference as may be required for the purposes of this Order.

Period for compulsory purchase of lands.

13. The powers of the company for the compulsory purchase of lands for the purposes of this Order shall cease after the expiration of three years from the commencement of this Order (n).

Payment of purchase-money or compensation to trustees.

14. Notwithstanding anything in the Lands Clauses Acts the company may pay to two trustees in the manner provided by section 17 of the Lands Clauses Consolidation Act 1845 all sums of money exceeding twenty pounds and not exceeding five hundred pounds due or payable by way of purchase-money or compensation (o).

Power to accept lease of lands.

15. Instead of purchasing any lands (not being lands required for the construction of the railway) which the company are by this Order authorised to purchase the company may by agreement with any parties competent to grant the same accept and take a lease of such lands.

Persons under disability may grant easements, &c.

16. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may if they think fit subject to the provisions of those Acts and of this Order grant to the company any easement (p) right or privilege (not being an easement (p) right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Order in over or affecting any such lands and the provisions of the said Acts with respect to lands and rent-charges (p) so far as the same are applicable in this behalf shall extend and apply to such easements (p) rights and privileges respectively.

[Here insert clauses, if any, for the protection of individuals in respect of the acquisition of lands (q).]

Restriction on taking houses of labouring class.

17.—(1.) The company shall not under the powers of this Order purchase or acquire in any city borough or other urban district nor elsewhere than in an urban district in any parish ten or more houses which on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers nor except with the consent of

(l) See note (z) to sect. 11 of the Act.

(m) See, generally, notes (z) and (g) to sect. 11 of the Act.

(n) See note (g) to sect. 11 of the Act. As to amending applications for extension of time, see sect. 24 of the Act and notes thereto.

(o) So sect. 14 of the Act, *q.v.* The Scots equivalent is there given.

(p) In Scots Orders substitute "servitude" or "servitudes" and "ground annuals or feu duties" respectively.

(q) See note (l) to sect. 11 of the Act.

the Local Government Board ten or more houses which were not on the said fifteenth day of December but at any time between that date and the time at which such purchase or acquisition takes place or is intended to take place may have been or be so occupied.

(2.) If the company purchase or acquire any house in contravention of the foregoing provisions they shall be liable to a penalty of five hundred pounds in respect of every such house which penalty shall be recoverable by the Local Government Board by action in the High Court and shall be carried to and form part of the Consolidated Fund of the United Kingdom: Provided that the Court may if it think fit reduce such penalty.

(3.) For the purposes of this section the expression "labouring class" means mechanics artisans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any of such persons who may be residing with them and the expression "house" means any house or part of a house occupied as a separate dwelling (r).

18. The company may by agreement purchase additional land for any of the extraordinary purposes specified in the Railways Clauses Consolidation Act 1845 connected with the railway not exceeding in quantity five acres but nothing in that Act or in this Order shall exempt the company from any indictment action or other proceeding for nuisance in the event of any nuisance being caused or permitted by them upon any land so taken (s).

Lands for extraordinary purposes.

[18a. *If the company under the powers of this Order acquire any lands over which any wires belonging to the National Telephone Company Limited (in this section called "the Telephone Company") are at the time of such acquisition carried the company shall if within a period of three months from that time they are so required by the Telephone Company grant to the Telephone Company an easement to carry such wires over such lands if and so long as the following conditions are observed unless otherwise agreed in writing between the company and the Telephone Company:—*

For the protection of the National Telephone Company, Limited.

- (1.) *The Telephone Company shall pay to the company in respect of such easement a reasonable charge rent or other consideration;*
- (2.) *No supports for the wires shall be erected or maintained on any lands so acquired by the company nor shall the wires be affixed to any property of the company;*

(r) This is the common-form clause. It is not easy of practical application, and an alteration is contemplated. In Scots Orders substitute for "city . . . an urban district," "district within the meaning of the Public Health (Scotland) Act, 1897"; for "Local Government Board," "Secretary for Scotland"; and for "High Court," "Court of Exchequer in Scotland."

(s) With regard to nuisances on lands, additional or otherwise, purchased for the purposes of an undertaking, see note (h) to sect. 55 of Tramways Act, 1870, ante, p. 232.

(3.) *The wires shall not in any way interfere with the user of the undertaking nor shall the Telephone Company in placing maintaining or altering the wires cause any obstruction to the traffic along or the user of the undertaking ;*

(4.) *If the company at any time use upon the railway electric power as a motive power under this Order the Telephone Company shall pay any reasonable additional expenses which the company may incur in fixing and maintaining any guard wires or other equivalent hereto required by the Board of Trade in consequence of any wire of the Telephone Company being carried over such lands as aforesaid.*

If any difference arises under this section between the company and the Telephone Company that difference shall be referred to arbitration under this Order.]

WORKS (t).

Period for
completion of
works.

19. If the railway is not completed within *five* (u) years from the commencement of this Order or such extended time as the Board of Trade may approve then on the expiration of that period the powers by this Order granted to the company for making and completing the same or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Power to
deviate.

20. Subject to the provisions of this Order the company in making the railway may deviate from the lines and levels of the railway as delineated on the plan and section to the following extent :—

(1.) The company may deviate laterally to any extent within the limits shown on the plan and to such extent beyond those limits with the consent of the owners occupiers and lessees of the lands on which such deviation is intended to be made and of the road authority of any public road affected by such deviation as may be approved by the Board of Trade.

(2.) The company may deviate vertically from the levels of the railway shown on the section to any extent except that—

(a) Where a public road is affected by such deviation the consent of the road authority shall be requisite to any deviation exceeding in any place five feet or exceeding in a town village street or land continuously built on two feet ;

(b) Where any public sewers gas pipes or water pipes are affected by such deviation the consent of the owners or persons having the control thereof respectively shall be requisite to any deviation exceeding the respective limits aforesaid :

(t) See generally notes (z) and (g) to sect. 11 of the Act.

(u) See note (g) to sect. 11 of the Act.

Provided that the company shall not construct any embankment of a greater height above the surface of the ground than such height thereof as shown on the section and ten feet in addition (*x*).

- (3.) The company may subject to the foregoing provisions alter the radius of any curve described on the plan so that no such curve shall thereby be reduced to a less radius than nine chains and may further reduce the radius of any curve to such extent as the Board of Trade may approve and may alter any inclination or gradient of the railway shown on the section so that no such inclination or gradient thereby increased shall without the consent of the Board of Trade be steeper than one foot in fifty feet (*y*).

21. In altering any road for the purpose of constructing a bridge to carry the railway over the road or the road over the railway [*or the existing railway*] or for the purpose of carrying the railway across the road on the level the company may make the same of any inclination not steeper than the inclination shown in connection therewith on the section and if no inclination be so prescribed then of such inclination in each case as may be not steeper than that prescribed for a road of the same description by the Railways Clauses Consolidation Act 1845. Inclinations of roads.

22. Notwithstanding anything shown on the plan or section the company shall carry the railway over— Bridges over roads and footways.

(1) The public roads hereinafter mentioned by means of bridges of a single span not less than that hereinafter mentioned in connection therewith respectively and having a clear headway above the surface of the road for the space of *ten* feet over such road not being less than that hereinafter mentioned (that is to say):—

No. of Road on Plan.	Parish.	Span.	Height.

and the clear height at the springing of the arch shall not be less than *twelve* feet above the surface of the road.

(2) The footways hereinafter mentioned by means of bridges of a single span not less than that hereinafter mentioned in connection therewith respectively and having a clear headway for a space of four feet above the surface of the footway not being less than that

(*x*) See note (*a*) to sect. 7 of the Act.

(*y*) See note (*z*) to sect. 11 of the Act.

MODEL LIGHT RAILWAY ORDER (CLASS A.).

hereinafter mentioned in connection therewith respectively (that is to say) :—

No. of Footway on Plan.	Parish.	Span.	Height.

Bridges over railway.

23. Notwithstanding anything shown on the plan or section the company shall carry the roads hereinafter mentioned over the railway by means of bridges of such widths between the fences thereof as the company think fit not being less than the widths hereinafter mentioned in connection therewith respectively (that is to say) :—

No. of Road on Plan.	Parish.	Width.

As to crossing roads on level and gates.

24.—(1) Except as hereinbefore provided the company may in the construction of the railway carry the same with a single line only whilst the railway shall consist of a single line and afterwards with a double line only across and on the level of any public highway shown on the plan.

(2) The company shall erect and maintain at all times gates across the railway on each side of the road—

- (a) At the level crossing of the public roads respectively numbered on the plan in the parish of and in the parish of ; and
- (b) At any level crossing of a public road at which the company determine so to erect and maintain gates ; and
- (c) At any level crossing of a public carriage road at which the Board of Trade require the company in accordance with this section so to erect and maintain gates.

(3) The Board of Trade may if at any time after the completion and opening of the railway it appears to them necessary for the public safety or for preventing cattle or horses from entering upon the railway require the company to erect and maintain at all times gates across the railway at each side of the road at any level crossing of a public carriage road.

(4) Where gates are erected and maintained in accordance with this section the following provisions shall apply :—

- (a) The company shall unless otherwise permitted by the Board of Trade in writing employ a proper person to open and close such gates on either side of the level crossing ;
- (b) Such gates shall be kept constantly closed across the railway except during the time when engines carriages or trucks passing along the railway shall have occasion to cross the road and shall be of such dimensions and so constructed as when closed across the railway to fence in the railway and prevent cattle or horses on the road from entering upon the railway ;
- (c) The drivers or conductors of any engines carriages or trucks passing along the railway or other the person whose office or duty it may be to open or close the said gates shall cause the same to be closed as soon as such engines carriages or trucks shall have passed through the same.

25. With respect to every level crossing of a public carriage road other than a level crossing where gates are erected and maintained in accordance with the foregoing provisions of this Order the following provisions shall apply (that is to say) :—

Level crossings without gates.

- (a) Cattle-guards or other suitable contrivances shall be erected or constructed at each side of the road and so maintained and kept as to prevent cattle or horses entering upon the railway from the road ;
- (b) At each of two points one three hundred yards along the railway in one direction from the level crossing and the other three hundred yards along the railway in the other direction from the level crossing there shall be erected and maintained a white post standing five feet above ground and bearing upon it and so as to be plainly legible by the driver of an engine approaching the level crossing a figure indicating the number of miles an hour which is fixed under the provisions of this Order as the maximum rate of speed of a train or engine approaching and within a distance of three hundred yards from the level crossing ;
- (c) At each of two points one fifty yards or thereabouts along the road in one direction from the point of crossing and the other fifty yards or thereabouts along the road in the other direction from the point of crossing there shall be erected and maintained by the company a notice board cautioning the public to beware of the trains.

[25a. *The company shall divert the public road numbered on the plan in the parish of in the manner shown on a plan signed by and by a copy of which has been deposited with the Board of Trade and when the new portion of such road is made to the satisfaction of the road authority and is open for public use shall stop* *Power to divert road.*

up and cause to be discontinued so much of the existing road as will be rendered unnecessary by the new portion of road and when and so soon as such portion of the existing road is so stopped up all rights of way over the same shall cease and the company may subject to the provisions of the Railways Clauses Consolidation Act 1845 with respect to mines lying under or near to the railway appropriate and use for the purposes of the undertaking the site of the portion of road stopped up as far as the same is bounded on both sides by lands of the company.]

Repair of
roads and
bridges.

26. Where in the exercise of the powers by this Order conferred the company raise sink break up or otherwise interfere with any public road for the purpose of altering the gauge of the existing railway or constructing the railway across the road on the level or for carrying the road over or under the railway [*or the existing railway*] the company shall make good all damage done by them to the road and properly restore the road and shall for a period of twelve months from the date of such restoration properly maintain and repair the road so interfered with. From and after the expiration of that period the road shall be maintained and repaired by and at the expense of the same parties in the same manner and to the same extent as other roads of the same nature within the parishes in which the road will be situate are liable to be maintained and repaired. But the company shall be and continue to be liable to maintain and repair the structure of any bridge (including the fences thereof and of the immediate approaches thereto) by which the railway [*or the existing railway*] is carried over any such road or any such road is carried over the railway [*or the existing railway*] and also so much of the road at any level crossing as lies between the rails of the railway [*or the existing railway*] and for a width of seven feet outside the rails on each side of the railway [*or the existing railway*].

Differences as
to roads
referred to
arbitration.

27. Any difference which may arise under this Order between the company and the road authority of any public road interfered with under the powers of this Order as to the necessity for the construction of a temporary road under the provisions of this Order or the sufficiency thereof or of the repair thereof or as to the proper completion of any alteration of any public road or the sufficiency of the repair of any public road which the company are by this Order required to repair shall be determined by arbitration under this Order.

As to fencing
of railway.

[27a. *Notwithstanding anything contained in the Railways Clauses Consolidation Act 1845 and subject to the provisions of this Order the company shall not be bound to fence the line of the railway except where either before or within two years after the opening of the railway for public traffic the owner of any land adjoining the railway by notice in writing requires the company to erect a fence or fences between the line of the railway and the land of such owner or any part thereof: Provided that cattle guards or other suitable contrivances shall be constructed and maintained where the railway crosses existing fences and*

at the ends of the fencing so as to prevent cattle or horses from straying on to the railway (z).]

[Here insert clauses for the protection of any persons or corporations in respect of the works of the company (u).]

[27b. For the protection of the Railway Company (hereinafter referred to as "the Company") the following provisions shall except so far as it may be otherwise agreed in writing between the company and the Company have effect (that is to say):—

For the protection of the Railway Company.

- (1.) Except for the purpose of making and maintaining the railway in accordance with this section the company shall not acquire any rights over any land of the Company or take or enter upon either temporarily or permanently any of the land or works of the Company;
- (2.) With respect to any land of the Company which the company are by this Order authorised to enter upon take or use for the purpose aforesaid the company shall not purchase or take the same but the company may purchase and take and the Company shall sell and grant accordingly so far as their interest in the said land extends an easement or right of using the same;
- (3.) The consideration to be paid for any easement or right acquired by the company under the preceding sub-section shall in case of difference be determined in manner provided by the provisions of the Lands Clauses Acts as varied by the principal Act with respect to the purchase of land otherwise than by agreement;
- (4.) The company shall carry railway No. over the Railway at such point within the limits of deviation shown on the plan as shall be approved by the Company (such approval not being unreasonably withheld) by means of a viaduct or bridge of which the centre opening shall be constructed over the existing line of railway of the Company with a span of not less than feet measured on the square and the two openings on each side thereof shall be of a span sufficient to carry the abutments of such openings beyond the fences of the property of the Company on either side of the existing railway of the Company and having a clear headway throughout of not less than feet from the upper surface of the existing rails;
- (5.) Any junction of the railway with the railway of the Company shall be effected with such railway or a siding thereof at such point within the limits of deviation shown on the plan and in such manner and according to such mode of construction as may be reasonably required by the Company and the provisions of sections 9 to 12 both included of the Railways Clauses Act 1863 shall apply with respect to any such junction;
- (6.) The company or the Company if carrying out any work in the place of the company under the provisions of this section shall construct and maintain the railway where the same will be made upon or across or will interfere with any

(z) See note (z) to sect. 11 of the Act.

(u) See note (l) to sect. 11 of the Act.

MODEL LIGHT RAILWAY ORDER (CLASS A.).

land railway or work of the Company according to plans sections and specifications and of such quality and strength of materials and in every other respect as the company shall previously submit to and shall be approved in writing by the Company (such approval not being unreasonably withheld) in all things at the expense of the company and under the superintendence (if such superintendence shall be given) and to the reasonable satisfaction of the Company or the company as the case may be ;

- (7.) The Company may hereafter alter or remove any such junction and works and substitute therefor a new junction and works at the reasonable expense of the company but so that any such alteration or substitution shall not stop the traffic on the railway or cause increased expense to the company in the working of the junctions sidings signals works or conveniences connected therewith. The provisions of this Order shall be applicable to any junction and works substituted as aforesaid in the same way as to the junctions and works for which they are substituted ;
- (8.) Before the company commence to construct any junction of the railway with a railway or siding of the Company or to do any work within the fences of the property of the Company they shall give notice to the Company who may elect themselves to construct and maintain such junction and the works connected therewith so far as the same may be on land of the Company. In that case the Company shall within fourteen days after receipt of such notice as aforesaid notify to the company their intention and shall thereupon with all reasonable despatch proceed in the place of the company to carry out the works and to complete the same ;
- (9.) Except as hereinbefore otherwise expressly provided the company shall at their own expense at all times maintain the railway where the same will be made upon or across or will interfere with any land railway or works of the Company in substantial repair and good order and condition to the reasonable satisfaction in all respects of the Company and if and whenever the company fail so to do and continue in such default for one month after they have received notice in writing from the Company requiring them to execute any works or in any case of urgent necessity the Company may make and do such works as may be requisite at the reasonable expense of the company ;
- (10.) The company shall not in any manner in the execution or maintenance of any of their works obstruct or interfere with the free uninterrupted and safe use of any railway of the Company or the traffic thereon ;
- (11.) The company shall on demand pay to the Company the reasonable expense of the employment by them during the execution or repair of any work affecting any railway or work of the Company of such inspectors signalmen or watchmen to be appointed by the Company as may be necessary for preventing all interference obstruction danger and accident from any of the operations or from the acts or defaults of the company or their contractors or any persons

in the employ of either of them with reference thereto or otherwise ;

- (12.) *The company shall be responsible for and make good to the Company all losses damages and expenses which may be occasioned to the Company by reason of the execution or failure of any of the works in this section referred to (whether during construction or after completion thereof) or of any act or omission of the company or their contractors or of any persons in the employ of either of them and if any interruption or delay shall be occasioned to the traffic of or upon any railway siding or other work of the Company by reason of any of the matters or causes aforesaid the company shall pay to the Company all costs and expenses to which that company may be thereby put as well as full compensation for all loss sustained by them by reason of such interruption or delay ;*

- (13.) *The company shall at their own expense provide on their own land at or near any such junction all necessary and proper sidings and accommodation to the reasonable satisfaction of the Company for the interchange and forwarding of traffic to and from the railway from and to the railways of the Company ;*

- (14.) *If the Company reasonably consider that it will be necessary for them to purchase or pay compensation for any minerals required to be left unworked for the protection and safety of the railway works or property of the Company as well as of the railway then the company shall on demand pay to the Company a fair proportion of the costs and expenses incurred by them in relation to any such purchase or payment of compensation ;*

- (15.) *If any difference arises under this section between the company and the Company that difference shall be referred to arbitration under this Order.]*

[27c. *In respect of the common lands known respectively as and hereinafter called “ Common ” numbered on the plan in the parish of the following provisions shall have effect (that is to say) :—*

For the protection of certain common lands.

- (1.) *In carrying the railway over Common the company shall construct the same as near as may be reasonably practicable to the southern limit of deviation shown on the plan.*
- (2.) *The quantity of land to be taken by the company for the railway shall not exceed a quarter of an acre.*
- (3.) *Before taking or entering upon any portion of Common the company shall acquire not less land abutting thereon than the quantity to be taken as aforesaid in respect thereof and shall execute a proper deed of conveyance for vesting the land so acquired so that it may be added to and may thereafter remain to all intents part of Common.*
- (4.) *The company shall provide across the railway where it passes through Common such level crossings and footpaths as may be required by the Council.*
- (5.) *The company shall not use any barbed wire for fencing the*

railway where the same adjoins or passes through the common lands aforesaid.

- (6.) *If any difference arises under this section between the company and any person interested in the said common lands that difference shall be referred to arbitration under this Order (b).]*

For the protection of sewers and drains of sanitary authorities.

[27d.—(1.) *Notwithstanding anything contained in this Order any sanitary authority (in this section referred to as “the authority”) shall at all times have free access to and communication with any sewer or drain or any works in connection therewith under their control and may exercise any power which they may possess of laying drains to communicate therewith without the concurrence or consent of the company: Provided that any works done by the authority so far as such works may affect the railway shall be carried out under the superintendence (if such superintendence shall be given) and to the reasonable satisfaction of the company and if so required by the company in accordance with plans sections and specifications to be previously submitted to and approved by them or in case of difference to be settled by arbitration under this Order (such approval not being unreasonably withheld) and if the company do not signify their approval or otherwise within twenty-eight days after such submission they shall be taken to have approved:*

(2.) *Where any of the works to be done under this Order pass over or under or may interfere with any such sewer drain or works or in any way affect the sewerage or drainage of the district under the control of the authority the company shall give to the authority twenty-eight days' previous notice in writing of their intention to commence such works, such notice being accompanied by plans and sections with sufficient particulars thereof and the company shall not commence the same except with the approval of the authority (such approval not being unreasonably withheld) and if the authority do not signify their approval or disapproval or give other directions within twenty-eight days after receipt of such notice as aforesaid they shall be taken to have approved. The company shall comply with all reasonable directions of the authority in the execution of the said works and shall provide by new altered or substituted works in such manner as the authority shall reasonably require for their proper protection in respect of and for preventing injury or impediment to the said sewers drains or works and shall execute all such works at their own expense under the superintendence of the authority (if such superintendence shall be given) and the company shall on demand repay to the authority any reasonable expenses to which they may be put by reason of the railway. Any new altered or substituted works as aforesaid shall thereafter be as fully under the control of the authority as the sewers drains or works respectively for which they were substituted:*

(3.) *Instead of any such works as are in the preceding sub-section referred to being executed by the company they may be executed by the*

(t) See sect. 21 of the Act and notes thereto.

authority if they so require at the reasonable expense of the company. If the authority intend to execute such works themselves they shall within twenty-eight days after receipt of such notice as aforesaid give to the company notice accompanied by sufficient particulars of that intention and shall commence execute and complete the works with all reasonable dispatch :

(4.) *If by reason of the execution of any of the powers of this Order the authority shall necessarily incur any expense in reconstructing lengthening altering or repairing any existing sewer drain or works or any additional expense in thereafter maintaining the same the company shall repay to the authority such expense :*

(5.) *If any difference arises under this section between the company and the authority that difference shall be referred to arbitration under this Order.]*

28.—(1.) If the company use electric power as a motive power and having regard to the proposed position of any works by this Order authorised when considered in relation to the position of the works of any railway company at any point where the railway will be constructed over or under any railway of such railway company it becomes advisable in order to avoid danger from the breaking or falling of wires that the electric telegraphic telephonic or signal wires or apparatus of such railway company should be altered the railway company may execute any works reasonably necessary for that alteration and the reasonable expense of executing those works shall be borne by the company.

Danger from breaking or falling wires.

(2.) If any difference arises under this section between the company and any railway company that difference shall be referred to arbitration under this Order.

29. The company may enter into and carry into effect agreements and arrangements with any parties who are the owners lessees or occupiers of any lands adjoining or near to the railway and are competent to enter into such agreements or arrangements with reference to the construction and maintenance by the company or by such parties of sidings junctions works and conveniences for their accommodation or benefit either on the lands owned by leased to or occupied by them or on the lands of the company and the company may apply their corporate funds and revenues for the purposes of such agreements or arrangements.

Agreements with adjoining owners, &c.

[29a. *If the company fail within any period limited by or extended by the Board of Trade under this Order to complete the railway the company shall be liable to a penalty of twenty pounds a day for every day after the expiration of the period so limited until the railway is completed and opened for the public conveyance of passengers [upon the portions thereof on which the same is by this Order authorised] or until the sum received in respect of such penalty amounts to five per centum on the estimated cost of the works and the said penalty may be applied*

Penalty unless railway is opened within the time limited.

for by any landowner or other person claiming to be compensated under this Order or interested in accordance with the provisions of the next following section of this Order and in the same manner as the penalty provided in section 3 of the Railway and Canal Traffic Act 1854 and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such Court or judge as is specified in that section to an account opened or to be opened in the name of the Paymaster-General for and on behalf of the Supreme Court in the bank and to the credit specified in such warrant or order and shall not be paid thereout except as hereinafter provided but no penalty shall accrue in respect of any time during which it shall appear by a certificate to be obtained from the Board of Trade that the company were prevented from completing or opening such line by unforeseen accident or circumstances beyond their control provided that the want of sufficient funds shall not be held to be a circumstance beyond their control.

*Application of
penalty.*

29b. Every sum of money so recovered by way of penalty as aforesaid shall be applicable and after due notice in the "London Gazette" shall be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement construction or abandonment of the railway or who have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by this Order and for which injury or loss no compensation or inadequate compensation has been paid and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the High Court may seem fit and if no such compensation is payable or if a portion of the sum or sums of money so recovered by way of penalty as aforesaid has been found sufficient to satisfy all just claims in respect of such compensation then the said sum or sums of money recovered by way of penalty or such portion thereof as may not be required as aforesaid shall if a receiver has been appointed or the company are insolvent or the railway in respect of which the penalty has been incurred or any part thereof has been abandoned be paid or transferred to such receiver or be applied in the discretion of the Court as part of the assets of the company for the benefit of the creditors thereof and subject to such application shall be repaid or retransferred to the company (c).]

*Opening of
railway
[and existing
railway].*

30.—(1) No part of the railway shall be opened for the public conveyance of passengers until one month after notice in writing of the intention of opening it has been given by the company to the Board of Trade and until ten days after notice in writing has been given by the company to the Board of Trade of the time when it will be in the opinion of the company sufficiently completed for the safe conveyance of passengers and ready for inspection.

(c) This and the preceding section are only inserted where no deposit has been made. See sects. 54 to 57, *post*. See note (i) to sect. 11 of the Act.

(2) If any part of the railway is so opened by the company without such notice the company shall forfeit to His Majesty the sum of twenty pounds for every day during which it continues open until the notices have been duly given and shall have expired.

(3) If the officer appointed by the Board of Trade to inspect the railway after inspection reports in writing (accompanied by a statement of his reasons for the report) to the Board of Trade that in his opinion the opening of the railway would be attended with danger to the public using it either by reason of the railway not being constructed or equipped in accordance with the provisions of this Order or by reason of some defect or default in respect of any matter or matters not expressly prescribed in this Order the Board of Trade may order the company to postpone the opening until the Board shall have been satisfied that all requisitions made by the inspecting officer upon his inspection as being necessary for compliance with the said provisions or for the safety of the public have been complied with or that the railway can otherwise be opened with safety to the public.

(4) If any part of the railway is opened by the company contrary to any such Order of the Board of Trade the company shall forfeit to His Majesty the sum of twenty pounds for every day during which it continues open contrary to that Order.

(5) No such Order of the Board of Trade shall be binding on the company unless a copy of the report of the officer on which the Order shall be founded is delivered to the company with the Order.

(6) This section shall extend to the opening at any time after the original inspection of the railway [*or of the existing railway*] under this section on behalf of the Board of Trade of any additional line of railway deviation line station junction with a line of railway carrying passengers or level crossing of a public road which forms a part of or is directly connected with the railway [*or the existing railway*] but the Board of Trade may with respect to any such additional line of railway deviation line station junction with a line of railway carrying passengers or level crossing of a public road upon the application of the company dispense with the notice of opening required to be given thereunder (*d*).

PROVISIONS AS TO WORKING (*e*).

31.—(1) The company shall not without the previous consent in writing of the Board of Trade use upon the railway any engine carriage or truck bringing a greater weight than (f) tons upon the rails by any one pair of wheels: [*Provided that if at any time the rails used shall weigh not less than pounds per yard* Restrictions of weight on rails and of speed.

(d) See sect. 25 of Tramways Act, 1870, *ad fin.*, and notes thereto.

(e) See generally note (a) to sect. 11 of the Act.

(f) As to load, see note (a) to sect. 11 of the Act.

the company may use upon the railway any engine carriage or truck bringing a weight not greater than (g) tons upon such rails by any one pair of wheels.]

(2) The company shall not run any train or engine upon the railway [or the existing railway] at a rate of speed exceeding at any time twenty-five miles an hour or exceeding twenty miles an hour when such train or engine is passing over any gradient steeper than one foot in fifty or exceeding ten miles an hour when such train or engine is passing over any curve the radius of which is less than nine chains (g).

(3) The rate of speed of a train or engine within the distance of three hundred yards from a level crossing over a public road where no gates are erected and maintained across the railway shall not exceed ten miles an hour but the Board of Trade may fix a lower maximum speed in the case of any such level crossing if the view of the railway from the road near the crossing is at any point or for any distance so obstructed as in their opinion to render the higher maximum speed unsafe for the public using the road (g).

Trains not to stand on level crossings.

Power to use portions of the Railway.

32. Where the company carry the railway across any public carriage road on the level the company shall not unnecessarily allow any train engine carriage or truck to stand across the level crossing.

[32a. *The company and any company or persons for the time being working or using the railways or any part thereof may by agreement (but not otherwise) with the Company run over and use with their engines carriages waggons and trucks and their officers and servants whether in charge of engines and trains or for any other purpose whatsoever for the purpose of interchange of any traffic so much and such portion of the railway or sidings of the Company as is situate between Station and Station including those stations together with all roads platforms points signals water water-engines engine-sheds standing-room for engines booking and other offices warehouses sidings goods-yards junctions machinery works and conveniences of or connected with the portions of the said railways and stations respectively.*

By-laws to be observed.

32b. *In running over and using the said portions of the railways of the Company and in using the stations sidings and conveniences in accordance with the provisions hereinbefore contained the regulations and by-laws for the time being in force with respect to the said portions of railway stations sidings and conveniences shall be at all times observed so far as such regulations and by-laws shall be applicable.*

Terms of user.

32c. *The terms conditions and regulations to be observed and fulfilled and the tolls charges rent or other consideration to be paid by the company or any other such company or persons as aforesaid for and*

in respect of the use of such portions of railway stations works and conveniences shall be such as may be agreed upon between them and the Company (h).]

33. The company on the one hand and the Railway Company or the Railway Company on the other hand may subject to the provisions of Part III. of the Railways Clauses Act 1863 as amended or varied by the Railway and Canal Traffic Acts 1873 and 1888 enter into agreements with respect to the following purposes or any of them (that is to say) :—

Power to enter into agreements with the Railway Company or the Railway Company.

- (1.) The construction maintenance and management of the railway or of any part thereof ;
- (2.) The use or working of the railway or of any part thereof and the conveyance of traffic thereon ;
- (3.) The regulation collection transmission and delivery of traffic coming from or destined for the undertakings of the contracting companies or any of them ;
- (4.) The fixing subject to the authorised maximum rates and the collecting payment appropriation and apportionment of the tolls rates charges receipts and revenues levied taken or arising in respect of traffic ;
- (5.) The supply and maintenance by the working company under any agreement for the railway or any part thereof being worked and used by the Railway Company or the Railway Company as the case may be of rolling stock and plant necessary for the purposes of such agreement ;
- (6.) The employment of officers and servants for the conveyance and conduct of traffic and all incidental matters (h).

34. Nothing in any agreement made under the authority of this Order shall affect the rights of His Majesty's Postmaster-General under the Telegraph Act 1878 to place and maintain telegraphic lines in under upon along over or across the railway and to alter such telegraphic lines and to enter upon the land and works comprised in the undertaking for the purposes in the Telegraph Act 1878 specified and the Postmaster-General shall after the making of any such agreement be at liberty to exercise all the rights aforesaid notwithstanding that the railway is worked by the Railway Company or the Railway Company as the case may be as freely and fully in all respects as he was entitled to do before the making of any such agreement.

Saving for Postmaster-General.

35. If the motive power used upon the railway be a mechanical power other than steam but including electric power the following provisions shall apply (that is to say) :—

Provisions as to motive power other than steam.

- (1.) Such mechanical power shall not be used except with the consent of and according to a system approved by the Board of Trade.

(h) See note (b) to sect. 11 of the Act.

- (2.) The Board of Trade shall make regulations (in this Order referred to as "the Board of Trade Regulations") for securing to the public all reasonable protection against danger arising from the use under this Order of such mechanical power and for regulating the same.
- (3.) If the company use such mechanical power as a motive power contrary to the provisions of this Order or of the Board of Trade Regulations the company shall for each offence be liable on summary conviction to a penalty not exceeding ten pounds and also in the case of a continuing offence to a further penalty not exceeding five pounds for every day during which such offence continues after conviction thereof.
- (4.) The Board of Trade if they are of opinion—
 (a) that the company have made default in complying with the provisions of this Order or of the Board of Trade Regulations whether a penalty in respect of such non-compliance has or has not been recovered or—
 (b) that the use of such mechanical power as a motive power as authorised under this Order is a danger to the passengers or the public—
 may by order either direct the company to cease to use such mechanical power as a motive power or permit the same to be continued only subject to such conditions as the Board of Trade may impose and the company shall comply with every such order.
- (5.) Any person owning working or running carriages on the railway shall be subject to the provisions of this Order (including the penal provisions thereof) relating to the use of such mechanical power as a motive power in the same manner and to the same extent as the company are subject to these provisions.

Special provisions as to use of electric power as motive power.

36. The following additional provisions shall apply to the use of electric power under this Order unless such power is entirely contained in and carried along with the carriages (that is to say):—
- (1) The company shall employ either insulated returns or uninsulated metallic returns of low resistance;
- (2) The company shall take all reasonable precautions in constructing placing and maintaining their electric lines and circuits and other works of all descriptions and also in working the undertaking so as not injuriously to affect by fusion or electrolytic action any gas or water pipes or other metallic pipes structures or substances or to interfere with the working of any wire line or apparatus used for the purpose of transmitting electric power or of telegraphic telephonic or electric signalling communication or the currents in such wire line or apparatus;

- (3) The electric power shall be used only in accordance with the Board of Trade Regulations and in such regulations provisions shall be made for preventing fusion or injurious electrolytic action of or on gas or water pipes or other metallic pipes structures or substances and for minimising as far as is reasonably practicable injurious interference with the electric wires lines and apparatus of other parties and the currents therein whether such lines do or do not use the earth as a return ;
 - (4) The company shall be deemed to take all reasonable precautions against interference with the working of any wire line or apparatus if and so long as they adopt and employ at the option of the company either such insulated returns or such uninsulated metallic returns of low resistance and such other means of preventing injurious interference with the electric wires lines and apparatus of other parties and the currents therein as may be prescribed by the Board of Trade Regulations and in prescribing such means the Board shall have regard to the expense involved and to the effect thereof upon the commercial prospects of the undertaking ;
 - (5) At the expiration of two years from the commencement of this Order the provisions of this section shall not operate to give any right of action in respect of injurious interference with any electric wire line or apparatus or the currents therein unless in the construction erection maintaining and working of such wire line and apparatus all reasonable precautions including the use of an insulated return have been taken to prevent injurious interference therewith and with the currents therein by or from other electric currents ;
 - (6) If any difference arises between the company and any other party with respect to anything hereinbefore in this section contained such difference shall unless the parties otherwise agree be determined by the Board of Trade or at the option of the Board by an arbitrator to be appointed by the Board and the costs of such determination shall be in the discretion of the Board or of the arbitrator as the case may be ;
 - (7) In this section the expression "the company" includes any company or person using working or running carriages over the railway [*or over the existing railway*](*k*) ;
- 37.—(a) Notwithstanding anything in this Order contained if any For protection

(*k*) See the regulations made by the Board of Trade for electric tramways, *ante*, pp. 356, 363, and see the authorities, *ante*, pp. 235 *sqq.* Add, if necessary, a clause as to Government laboratories, &c., as on p. 435, *ante*.

of the
Postmaster-
General.

of the works by this Order authorised involves or is likely to involve any alteration of any telegraphic line belonging to or used by His Majesty's Postmaster-General the provisions of section 7 of the Telegraph Act 1878 (*l*) shall apply to any such alteration.

(b) In the event of the railway being worked by electricity the following provisions shall have effect (that is to say):—

- (1.) The company shall construct their electric lines and other works of all descriptions and shall work the undertaking in all respects with due regard to the telegraphic lines from time to time used or intended to be used by the Postmaster-General and the currents in such telegraphic lines and shall use every reasonable means in the construction of their electric lines and other works of all descriptions and the working of the undertaking to prevent injurious affection whether by induction or otherwise to such telegraphic lines or the currents therein. Any difference which arises between the company and the Postmaster-General as to compliance with this sub-section shall be referred to arbitration under this Order;
- (2.) If any telegraphic line of the Postmaster-General is injuriously affected by the construction by the company of their electric lines and works or by the working of the said undertaking the company shall pay the expense of all such alterations in the telegraphic lines of the Postmaster-General as may be necessary to remedy such injurious affection;
- (3.)—(a) Before any electric line is laid down or any act or work for working the railway [*or the existing railway*] by electricity is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs) the company or their agents not more than twenty-eight nor less than fourteen days before commencing the work shall give written notice to the Postmaster-General specifying the course of the line and the nature of the work including the gauge of any wire and the company and their agents shall conform with such reasonable requirements (either general or special) as may be made by the Postmaster-General for the purpose of preventing any telegraphic line of the Postmaster-General from being injuriously affected by the said act or work;
 (b) Any difference which arises between the Postmaster-General and the company or their agents with respect to any requirements so made shall be referred to arbitration under this Order;
- (4.) If any telegraphic line of the Postmaster-General situate within one mile of any portion of the works by this Order authorised is injuriously affected and he is of opinion that such injurious affection is or may be due to the construction of any such works or to the working of the undertaking the engineer-in-chief of the Post Office or any

(*l*) 41 & 42 Vict. c. 76, s. 7, provides for the giving of notice to the Postmaster-General, and enables the Postmaster-General, if he thinks fit, to carry out the alterations himself.

person appointed in writing by him may at all times when electrical energy is being generated for the purposes of this Order at any of the works of the company enter thereon for the purpose of inspecting the plant and the working of the same and the company shall in the presence of such engineer-in-chief or such appointed person as aforesaid make any electrical tests required by the Postmaster-General and shall produce for the inspection of the Postmaster-General the records kept by the company pursuant to the Board of Trade Regulations;

- (5.) In the event of any contravention of or wilful non-compliance with this section by the company or their agents the company shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues or if the telegraphic communication is wilfully interrupted not exceeding fifty pounds for every day on which such interruption continues;
- (6.) Provided that nothing in this section shall subject the company or their agents to a fine under this section if they satisfy the Court having cognisance of the case that the immediate doing of the act or execution of any work in respect of which the penalty is claimed was required to avoid an accident or otherwise was a work of emergency and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the act or work was done a notice of the execution thereof stating the reason for doing or executing the same without previous notice;
- (7.) For the purposes of this section a telegraphic line of the Postmaster-General shall be deemed to be injuriously affected by an act or work if telegraphic communication by means of such line is whether through induction or otherwise in any manner affected by such act or work or by any use made of such work;
- (8.) For the purposes of this section and subject as therein provided sections 2 10 11 and 12 of the Telegraph Act 1878 shall be deemed to be incorporated with this Order (*m*);
- (9.) The expression "electric line" has the same meaning in this section as in the Electric Lighting Act 1882 (*n*);
- (10.) Nothing in this section contained shall be held to deprive the Postmaster-General of any existing right to proceed against the company by indictment action or otherwise in relation to any of the matters aforesaid;

(*m*) Sect. 2 is a definition section, sects. 10 and 11 provide for the prosecution of offences and the recovery of money by the Postmaster-General, and sect. 12 deals with the authentication, service, &c. of documents.

(*n*) 45 & 46 Viet. c. 56. The definition is (sect. 32):—"A wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith, for the purpose of conveying, transmitting or distributing electricity or electric currents."

- (11.) In this section the expression "the company" includes any company or person owning working or running carriages on the railway or on any portion thereof (o).

TOLLS, &c. (p).

Tolls.

38. The company may subject to the provisions of this Order demand and take for the use of the railway by any other company or person with engines and carriages such reasonable tolls as they think fit.

Rates for
merchandise.

39. The classification of merchandise traffic including perishable merchandise by passenger train and the schedule of maximum rates and charges applicable thereto and the regulations and provisions contained in the schedule to the Railway Company (Rates and Charges) Order 1891 (which Order is scheduled to and confirmed by the Railway Company (Rates and Charges) Order Confirmation Act 1891) shall be applicable and apply to the company as if it were one of the railway companies named in the appendix to the schedule to the Order confirmed by the said Act: Provided that in respect of the conveyance of a consignment of perishable merchandise not exceeding fifty-six pounds in weight by passenger train the company shall not be entitled to charge a higher rate than the maximum rate which they are authorised to charge for the conveyance of parcels of the same weight:

Provided also that unless the railway is acquired by any railway company existing at the commencement of this Order and not being a light railway company [or by the Railway Company] the maximum rates which the company shall be entitled to charge for the conveyance of goods and minerals over the railway shall for the period of five years from the opening of any part of the railway for traffic and thereafter so far as they are not reduced in pursuance of the power given by this section be twenty-five per centum higher than the corresponding rates contained in the aforesaid schedule.

The Board of Trade may at any time after the said period of five years reduce the maximum rates so that they are not less than the corresponding maximum rates contained in the said schedule (p).

Bicycles by
passenger
train.

[39a. *The company shall not charge more for any bicycle or tricycle carried by passenger train than pence for any distance not exceeding miles and pence per mile for any distance exceeding miles.*]

Charges for
small parcels.

40. For the conveyance on the railway of small parcels not exceeding five hundred pounds in weight by passenger train the company may demand and take any charges not exceeding the following (that is to say):—

For any parcel not exceeding seven pounds in weight three pence;

(o) See sect. 25 of the Act and note thereto.

(p) See sect. 11 (j) of the Act and note (A) thereto.

For any parcel exceeding seven pounds but not exceeding fourteen pounds in weight five pence ;

For any parcel exceeding fourteen pounds but not exceeding twenty-eight pounds in weight seven pence ;

For any parcel exceeding twenty-eight pounds but not exceeding fifty-six pounds in weight nine pence ;

For any parcel exceeding fifty-six pounds but not exceeding five hundred pounds in weight the company may demand any sum they think fit :

Provided that articles sent in large aggregate quantities although made up in separate parcels such as bags of sugar coffee meal and the like shall not be deemed small parcels but that term shall apply only to single parcels in separate packages.

41. The maximum rate of charge to be made by the company for the conveyance of passengers upon the railway including every expense incidental to such conveyance shall not exceed the following (that is to say) :—

Maximum
rates for
passengers.

For every passenger conveyed in a first-class carriage three pence per mile ;

For every passenger conveyed in a second-class carriage two pence per mile ;

For every passenger conveyed in a third-class carriage one penny per mile ;

For every passenger conveyed on the railway for a less distance than three miles the company may charge as for three miles and every fraction of a mile beyond three miles or any greater number of miles shall be deemed a mile.

42. Every passenger travelling upon the railway may take with him his ordinary luggage not exceeding one hundred and twenty pounds in weight for first-class passengers one hundred pounds in weight for second-class passengers and sixty pounds in weight for third-class passengers without any charge being made for the carriage thereof.

Passengers'
luggage.

43. The restrictions as to the charges to be made for passengers shall not extend to any special train run upon the railway in respect of which the company may make such charges as they think fit but shall apply only to the ordinary and express trains appointed by the company for the conveyance of passengers upon the railway (q).

Foregoing
charges not
to apply to
special trains.

CAPITAL (r).

44. The capital of the company shall be pounds in Capital.
shares of pounds each.

[44a. *The company may issue any portion not exceeding* *Preference*
pounds of the said capital of *pounds as preference capital* *shares.*

(q) Add here, if required, a section as to through tolls.

(r) See note (c) to sect. 11 of the Act.

and may attach thereto such preferential dividend not exceeding five per centum per annum and such rights to priority in distribution of assets as they may think fit. The provisions of sections 14 and 15 of the Companies Clauses Act 1863 shall be applicable in respect of such preference capital.]

Shares not to be issued until one-fifth [*or one-fourth*] paid.

45. The company shall not issue any share created under the authority of this Order nor shall any such share vest in the person accepting the same unless and until a sum not being less than one-fifth [*or one-fourth*] of the amount of such share is paid in respect thereof.

Calls.

46. One-fifth [*or one-fourth*] of the amount of a share shall be the greatest amount of a call and three months at least shall be the interval between successive calls and three-fifths [*or three-fourths*] of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Receipt in case of persons not sui juris.

47. If any money is payable to a shareholder or mortgagee or debenture stockholder being a minor idiot or lunatic the receipt of the guardian or committee of his estate shall be a sufficient discharge to the company.

Power to
Railway
Company to
subscribe.

[47a.—(1.) *The Company may with the authority of three-fourths of the votes of their shareholders present in person or by proxy at a general meeting of the said railway company specially convened for the purpose subscribe any sum which they think fit towards the undertaking and the Company may with like authority apply in or towards payment of such subscription any moneys which they are already authorised to raise and which may not be required by them for the purposes of their undertaking and the Company shall in respect of the sums to be subscribed and the corresponding shares in the company to be held by them have all the powers rights and privileges (except in regard to voting at general meetings which shall be as hereinafter provided) and be subject to all the obligations and liabilities of proprietors of shares in the company: Provided that the Company shall not sell dispose of or transfer any of the shares in the company for which they may subscribe.*

(2.) *The Company whilst shareholders of the company may by writing under their common seal appoint some person to attend any meeting of the company and such person shall have all the privileges and powers attaching to a shareholder of the company at such meetings and may vote thereat in respect of the capital held by the Company.]*

Power to borrow.

48. Subject to the provisions of this Order the company may in addition to any sum advanced by way of loan by any local authority borrow on mortgage of the undertaking in respect of their capital of _____ pounds by this Order authorised any sum or sums not exceeding in the whole _____ pounds and of that sum they may borrow *one thousand* pounds in respect of each *three thousand* pounds of the said capital:

Provided that no part of any such sum of money shall be borrowed by the company under the powers of this Order unless and until the portion of capital by this Order authorised in respect of which it is to be borrowed is issued and accepted and one-half thereof is paid up and the company have proved to the justice who is to certify under the fortieth section of the Companies Clauses Consolidation Act 1845 (before he so certifies) that the whole of such portion of capital has been issued and accepted and that one-half thereof has been paid up and that not less than one-fifth part of the amount of each separate share in such portion of capital has been paid on account thereof before or at the time of the issue or acceptance thereof and that such portion of capital was issued *bonâ fide* and is held by the persons or corporations to whom the same was issued or their executors administrators successors or assigns and that such persons or corporations their executors administrators successors or assigns are legally liable for the same and upon production to such justice of the books of the company and of such other evidence as he shall think sufficient he shall grant a certificate that the proof aforesaid has been given which shall be sufficient evidence thereof.

49. The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a receiver (s). In order to authorise the appointment of a receiver (s) in respect of arrears of principal the amount owing to the mortgagees by whom the application for a receiver (s) is made shall not be less than thousand pounds in the whole.

For appointment of a receiver.

50. The company may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act 1863 as amended by subsequent Acts but notwithstanding anything therein contained the interest of all debenture stock and of all mortgages at any time created and issued or granted by the company under this Order or any subsequent Order or Act of Parliament shall subject to the provisions of any subsequent Order or Act rank *pari passu* (without respect to the dates of the securities or of the Orders or Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages. Notice of the effect of this provision shall be indorsed on all such mortgages and certificates of such debenture stock (t).

Debenture stock.

51. All moneys raised by the company under this Order whether by shares stock debenture stock or borrowing shall be applied only for purposes of this Order to which capital is properly applicable.

Application of moneys.

52. Notwithstanding anything in this Order or in any enact-

Power to pay

(s) In Scots Orders "judicial factor."

(t) Not inserted in Orders for light railways of Class B., see note (c) to sect. 11 of the Act.

interest out
of capital
during con-
struction.

ment incorporated therewith contained the company may out of any money by this Order authorised to be raised pay interest at such rate not exceeding three pounds per centum per annum as the directors may determine to any shareholder on the amount paid up on the shares held by him from the respective times of such payments until the expiration of the time limited by or extended by the Board of Trade under this Order for completion of the railway or such less period as the directors may determine but subject to the conditions hereinafter stated (that is to say):—

- (a) No such interest shall begin to accrue until the company shall have deposited with the Board of Trade a statutory declaration by two of the directors and the secretary of the company that two-thirds at least of the share capital authorised by this Order in respect of which such interest may be paid has been actually issued and accepted and is held by shareholders who or whose executors administrators or assigns are legally liable for the same;
- (b) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear;
- (c) The aggregate amount to be so paid for interest shall not exceed thousand pounds and the amount so paid shall not be deemed share capital in respect of which the borrowing powers of the company may be exercised but such borrowing powers shall be reduced to the extent of one-third of the amount paid for interest as aforesaid;
- (d) Notice that the company have power so to pay interest out of capital shall be given in every prospectus advertisement or other document of the company inviting subscriptions for shares;
- (e) The half-yearly accounts of the company shall show the amount of capital on which and the rate at which interest has been paid in pursuance of this section.

Save as hereinbefore set forth no interest or dividend shall be paid out of any share or loan capital which the company are by this Order or any Act authorised to raise to any shareholder on the amount of the calls made in respect of the shares held by him but nothing in this Order shall prevent the company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation Act 1845.

Deposits not
to be paid for
out of capital.

53. The company shall not out of any money by this Order authorised to be raised pay or deposit any sum which by any Standing Order of either House of Parliament or by any rule of the Board of Trade now or hereafter in force may be required to be deposited in respect of any application to Parliament or to the Light Railway Commissioners for the purpose of obtaining an Act or

Order authorising the company to construct any other railway or to execute any other work or undertaking.

[*Advances (u).*]

[53a. *The local authorities named in this section and hereinafter referred to as "the investing authorities" or respectively as "the investing authority" are hereby authorised to advance to the company either by way of loan or as part of the share capital of the company or partly in one way and partly in the other any sums not exceeding in the case of the County Council of the sum of pounds in the case of the Corporation of the sum of pounds and in the case of the District Council the sum of pounds (x).*

As to advances by local authorities.

53b. *Any member or officer of any of the investing authorities for the time being authorised in that behalf in writing under the seal of such investing authority may vote and exercise any privileges of a shareholder in the capital of the company in respect of the shares held by that investing authority.*

As to votes of local authorities.

53c. *Any money advanced by any of the investing authorities to the company by way of loan shall—*

As to money advanced by local authorities by way of loan.

(a) *Bear interest at the same rate as that at which the investing authority in each case may borrow for the purpose of the advance or in the case of any investing authority which does not borrow for the purpose of the advance at the rate of three pounds per centum per annum; and*

(b) *Be repayable to each of the investing authorities respectively at such time and under such conditions as may be agreed upon at the time of the advance.*

53d. *The county council may without the consent of the Local Government Board borrow in manner provided by the Local Government Act 1888 (y) such sums as may be required by them for the purpose of an advance under this Order.*

Power of county council to borrow.

53e. *The corporation and any of the investing authorities being a rural district council may without the consent of the Local Government Board borrow in manner provided by the Public Health Act 1875 as if they were sums intended to be applied to the general expenses of such corporation or council such sums as may be required by them for the purpose of an advance under this Order.*

Power of corporation and rural district councils to borrow.

53f.—(1.) *Any money borrowed by any of the investing authorities under this Order shall (notwithstanding anything in the Local Government Act 1888) be repaid within such period not exceeding forty (yy) years as may be determined by each of the investing authorities respectively and that period shall be the prescribed period for the*

R payment of borrowed moneys.

(u) See, generally, sects. 3, 11 (g) and 16 of the Act, and the notes thereto.

(x) For Scots equivalents, see sect. 26 (2) of the Act and notes thereto.

(y) In Scotland, Local Government (Scotland) Act, 1889 (by the Act, sect. 26(7)).

(yy) See note (x) to sect. 16 of the Act.

purpose of the respective Acts regulating the borrowing under this Order by the investing authorities.

(2.) *Any money borrowed by the investing authorities under this Order shall be repaid by equal yearly or half-yearly instalments of principal or of principal and interest or by means of a sinking fund established in accordance with the provisions of the Second Schedule to this Order and returns shall be made to the Local Government Board in accordance with those provisions.*

*Application of
money repaid
to local
authorities.*

53g. *Any money repaid to or received by any of the investing authorities on account of the principal of any advance made by them under this Order shall be carried by such investing authority to the credit of their sinking fund so long as any money to be repaid by means of a sinking fund remains not repaid or where the investing authority has not borrowed for the purpose of the advance shall be repaid to the fund or account from which the same shall have been advanced and in any other case shall be applied with the approval of the Local Government Board in the payment of instalments of principal as aforesaid or as capital by that investing authority.*

*Application of
dividend by
local
authorities.*

53h. *Any dividend or interest paid to any of the investing authorities in any year in respect of an advance under this Order shall be applied by such investing authority in reduction of the payments required to be made to their sinking fund so long as any money to be repaid by means of a sinking fund remains not repaid or in the payment of the interest due upon money borrowed for the purpose of the advance or where the investing authority has not so borrowed shall be carried to the credit of the fund or account from which such advance shall have been made and in any other case shall be carried to the credit of the rate charged with the payment of interest on and the repayment of the money so borrowed.*

*Audit of
accounts.*

53i. *The accounts of any payment or receipts in respect of an advance under this Order shall be the accounts of the investing authorities respectively and shall be audited as such.*

*Assessment to
local rates.*

53j. *If the Treasury make any advance to the company as a free grant of which fact a statement in writing signed by the secretary or the assistant-secretary of the Treasury shall be sufficient evidence the railway shall not in any of the parishes through which it runs during a period of ten years from the commencement of this Order be assessed to any local rates at a higher value than that at which the land occupied by the railway would have been assessed if it had remained in the condition in which it was immediately before it was acquired for the purpose of the railway: Provided that the Board of Trade shall have power to extend the said period of ten years for such further period or periods as they may think fit (z).]*

(z) See sect. 5 of the Act and notes thereto. As to the date from which the period of ten years runs, see note (k) to sect. 5. As to rating in Scotland, see sect. 26 (9) and (10) of the Act.

DEPOSIT OF MONEY &c. (a).

54.—(1) Notwithstanding anything in this Order contained the company shall not exercise the powers by this Order conferred upon them unless and until they shall have paid as a deposit the sum of Deposit to be made by company before exercising powers.

thousand pounds to the account of the Paymaster-General for and on behalf of the Supreme Court to the credit of the railway and the Board of Trade shall issue their warrant to the company for such payment into Court and that warrant shall be a sufficient authority for the company to pay the said sum to the account of the Paymaster-General for and on behalf of the Supreme Court and for the Paymaster-General to issue directions for the same to be received and placed to his account according to the method (prescribed by statute or general rules or orders of Court or otherwise) for the time being in force respecting the payment of money into Court and without fee or reward.

(2) The company may bring into Court instead (whether wholly or in part) of the payment of money as a deposit an equivalent sum of bank annuities or of any stocks funds or securities in which cash under the control of the Court is for the time being permitted to be invested or of exchequer bills (the value thereof being taken at a price as near as may be to but not exceeding the current market price) and in that case the Board of Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks funds securities or exchequer bills by the company.

(3) The High Court may on the application of the company order that any money brought into Court as aforesaid be invested in such stocks funds or securities as the applicants desire and the Court thinks fit.

55. The money stocks funds securities or exchequer bills so deposited (hereinafter referred to as "the deposit fund") shall not be paid or transferred to or on the application of the company unless previously to the expiration of the period limited by or extended by the Board of Trade under this Order the company open the railway for the public conveyance of passengers and if the company shall make default in so opening the railway the deposit fund shall be applicable and shall be applied as hereinafter provided: Provided that if within such period the company open any part of the railway for the public conveyance of passengers then on the production of a certificate of the Board of Trade specifying the length of the part of the railway opened and the portion of Deposit fund not to be repaid until railway is opened.

(a) The deposit sections are only inserted if the penalty sections (*ante*, sects. 29a, 29b) are not. See sect. 11 (k) of the Act and note (i) thereto. For the variations required in Scots Orders, see *ante*, pp. 334-336. And see, generally, the notes to those pages.

the deposit fund which bears to the whole of the deposit fund the same proportion as the length of the railway so opened bears to the whole length of the railway the High Court shall on the application of the company order the portion of the deposit fund specified in the certificate to be repaid or re-transferred to them or as they shall direct and the certificate of the Board of Trade shall be sufficient evidence of the facts therein certified.

Application
of deposit.

56. If the company do not previously to the expiration of the period for the completion of the railway as limited by or extended by the Board of Trade under this Order complete and open the railway for the public conveyance of passengers then the deposit fund or so much thereof as shall not have been paid to the depositors shall be applicable and after due notice in the "London Gazette" shall be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement construction or abandonment of the railway or any portion thereof or who have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by this Order and for which injury or loss no compensation or inadequate compensation has been paid and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the High Court may seem fit. If no such compensation is payable or if a portion of the deposit fund has been found sufficient to satisfy all just claims in respect of such compensation then the deposit fund or such portion thereof as may not be required as aforesaid shall if a receiver has been appointed or the company are insolvent and have been ordered to be wound up or the undertaking has been abandoned be paid or transferred to such receiver or to the liquidator or liquidators of the company or be applied in the discretion of the Court as part of the assets of the company for the benefit of the creditors thereof and subject to such application shall be repaid or retransferred to the depositors: Provided that until the deposit fund has been repaid or retransferred to the depositors or has become otherwise applicable as hereinbefore mentioned any interest or dividends accruing thereon shall as often as the same shall become payable be paid to the company or as they direct.

As to warrant
or certificate
of Board of
Trade relating
to deposit or
to the deposit
fund.

57. The issuing of any warrant or certificate relating to the deposit hereinbefore prescribed or to the deposit fund or any error in such warrant or certificate or in relation thereto shall not make the Board of Trade or the person signing the warrant or certificate on their behalf in any manner liable for or in respect of the deposit fund or the interest of or dividends on the same or any part thereof respectively.

MISCELLANEOUS.

58. The provisions of the Schedule[s] to this Order shall be observed. As to
schedule[s].

59. Nothing in this Order contained shall exempt the company or the railway from the provisions of any general Act of Parliament which may hereafter pass affecting light railways authorised before the passing of that general Act or from the provisions of any general Act relating to the better or more impartial audit of the accounts of railway companies now in force or which may hereafter pass or from any future revision or alteration under the authority of Parliament of the maximum rates of fares and charges or of the rates for small parcels authorised to be taken by the company. Provision as
to general
Acts relating
to light
railways.

60. Any difference under this Order referred to arbitration shall unless otherwise expressly provided be referred to and determined by a single arbitrator appointed in manner provided by sect. 13 of the principal Act and the provisions of that section and any rules made under that section and the Arbitration Act 1889 shall apply to any such arbitration (b). Arbitration.

61.—(1.) If the company act in contravention of or fail to comply with any of the provisions of this Order and no penalty is expressly prescribed by this Order with respect to such contravention or non-compliance the company shall be liable to a penalty for each such offence not exceeding twenty pounds and to a penalty not exceeding five pounds for every day during which the offence continues after a penalty has been imposed in respect thereof; Penalties and
expenses.

(2.) Any penalty under this Order may be recovered in manner provided by the Summary Jurisdiction Acts.

(3.) Any expenses payable by or to the company under this Order may be recovered as a civil debt in manner provided by the Summary Jurisdiction Acts (c).

62. All costs charges and expenses of and incident to the preparing making and confirmation of this Order or otherwise in relation thereto shall be paid by the company. Costs of
Order.

(b) In Scots Orders substitute after "single": "arbitrator appointed in manner provided by sect. 13 of the principal Act as modified by sub-sects. (3) and (4) of sect. 26 thereof and the provisions of that section as so modified and any rules made thereunder and the provisions of the Lands Clauses Acts with respect to arbitration shall apply to any such arbitration."

(c) See sect. 56 of Tramways Act, 1870, and notes thereto.

[FIRST] SCHEDULE.

Permanent way.—The rails used shall weigh at least (c)
pounds per yard.

On curves with radii of less than nine chains a checkrail shall be provided.

If flat-bottom rails and wooden sleepers are used

- (a) the rails at the joints shall be secured to the sleepers by fang or other through bolts or by coach-screws or by double spikes on the outside of the rail with a bearing-plate and
- (b) the rails on curves with radii of less than nine chains shall be secured on the outside of the outer rail to each sleeper by a fang or other through bolt or by a coach-screw or by double spikes with a bearing plate and
- (c) the rails on curves with radii of less than nine chains shall be tied to gauge by iron or steel ties at suitable intervals or in such other manner as may be approved by the Board of Trade.

Turntables.—No turntables need be provided but no tender-engine shall be run tender foremost at a rate of speed exceeding at any time fifteen miles an hour.

Electrical communication.—If the Board of Trade require means of electrical communication to be provided on the line the company shall make that provision in such manner as the Board of Trade direct.

Signals.—At places where under the system of working for the time being in force trains may cross or pass one another there shall be a home-signal for each direction at or near the entrance points. If the home-signal cannot be seen from a distance of a quarter of a mile a distant-signal must be erected at that distance at least from the entrance points. The home-signals and distant-signals may be worked from the station by wires or otherwise.

Every signal-arm shall be so weighted as to fly to and remain at danger on the breaking at any point of the connection between the arm and the lever working it.

Precautions shall be taken to the satisfaction of the Board of Trade to ensure that no signal can be lowered unless the points are in the proper position and that two conflicting signals cannot be lowered simultaneously.

Platforms, &c.—Platforms shall be provided to the satisfaction of the Board of Trade unless all carriages in use on the railway for the conveyance of passengers are constructed with proper and convenient means of access to and from the same from and to the level of the ground on the outside of the rail.

There shall be no obligation on the company to provide shelter or conveniences at any station or stopping place (d).

(c) See note (z) to sect. 11 of the Act.

(d) See *ante*, p. 484.

[SECOND SCHEDULE.]

[*This is only inserted where an advance is to be made by a local authority, and relates to the sinking fund, &c. It is in the same terms as the Second Schedule to the Order for a Light Railway of Class B. (post, p. 635), with the substitution of "investing authority" for "corporation." See sect. 11 (g) of the Act and note (c) thereto.*]

This Order made by the Light Railway Commissioners and modified by the Board of Trade is hereby confirmed in pursuance of the provisions of sect. 10 of the Light Railways Act, 1896.

Given under the Seal of the Board of Trade this
day of 19 .

——— *President.*

——— *Assistant-Secretary.*

(*Seal of the
Board of Trade.*)

PRECEDENT OF AN ORDER FOR A LIGHT RAILWAY OF CLASS B.

(See note (*d*) to sect. 1 of the Act.)

[NOTE.—*This Order has been compiled from recent Orders. The words which it is necessary to vary, according as the promoters are a company or a local authority, are noted and shown in italics.*]

THE LIGHT RAILWAYS ACT 1896.

— LIGHT RAILWAY ORDER 19 .

ORDER AUTHORISING THE CONSTRUCTION OF LIGHT RAILWAYS
IN THE — OF — IN THE COUNTY OF —.

Preamble. [*As ante, p. 548.*]

PRELIMINARY.

Short title. 1. [*As ante, p. 550.*]
Interpre- 2. Words and expressions to which by the principal Act or any
tation. Acts in whole or in part incorporated with this Order meanings are
assigned have in this Order (unless the context otherwise requires)
the same respective meanings and in this Order—

*The expression “the company” means the company incorporated
by this Order ;*

*The expression “the council” means the District Council
of ;*

*The expression “the county council” means the county council of
the County of ;*

*The expression “the corporation” means the Mayor Aldermen
and Burgesses of the Borough of ;*

The expression "the principal Act" means the Light Railways Act 1896;

The expression "the railway" means the railways and works by this Order authorised or (as the case may be) any part thereof and the expression "the undertaking" means the undertaking by this Order authorised (*a*);

The expressions "the plans" "the sections" and "the book of reference" mean respectively the plans sections and book of reference deposited in respect of the application for this Order with the Board of Trade and signed by an assistant-secretary of the Board of Trade;

The expression "mechanical power" includes steam electric and every other motive power not being animal power and the word "engine" includes motor;

The expression "local authority" means the council of any borough or urban district or rural district (*b*);

The expression "road" means any carriage-way being a public highway and the carriage-way of any bridge forming part of or leading to the same (*c*);

The expression "road authority" means any county council local authority commissioners trustees or other body or persons who are charged with the duty of maintaining or repairing any road (*b*);

The expression "metalled" means so paved or made in any way as to form a road for vehicular traffic and the expression "unmetalled" shall be construed accordingly;

The expression "special resolution" means a resolution passed by a majority of not less than two-thirds of the members present and voting at a meeting of a local authority of which meeting at least one month's previous notice specifying the resolution to be proposed at such meeting has been given in the manner in which notices of the meetings of such local authority are usually given (*d*);

The Interpretation Act 1889 (*e*) applies for the purposes of this Order.

3.—(1.) Subject to the provisions of this Order the following enactments that is to say *the Companies Clauses Consolidation Act 1845 Part I. (relating to cancellation and surrender of shares) of the Companies Clauses Act 1863 as amended by subsequent Acts* the Lands Clauses Acts (except the provisions with respect to the purchase and taking of lands otherwise than by agreement) as

Incorporation and exception of Acts.

(*a*) See note (*o*) to Tramways Act, 1870, s. 43.

(*b*) For the Scots equivalents, see the Act, sect. 26 (2) and (6); and see also the definitions in Tramways Act, 1870, s. 3, and the notes thereto.

(*c*) See the definition in sect. 3 of Tramways Act, 1870, and the notes thereto.

(*d*) See Tramways Act, 1870, s. 43, and notes (*r*) and (*s*) thereto.

(*e*) 52 & 53 Vict. c. 63.

varied by the principal Act and sects. 7 24 89 90 103 104 105 108 to 113 both included 144 162 and 163 of the Railways Clauses Consolidation Act 1845 are hereby incorporated with this Order and sects. 5 and 6 of the Regulation of Railways Act 1889 are hereby applied to the railway and the undertaking.

In and for the purpose of the enactments so incorporated or applied the expressions "the promoters of the undertaking" and "the company" shall mean the council [or corporation].

(2.) In the construction of the incorporated provisions of the Railways Clauses Consolidation Act 1845 sections 7 and 162 of that Act shall be read and have effect as if the "clerk of the county council of " had been referred to therein instead of the clerks of the peace for the several counties in or through which the railway is intended to pass.

(3.) The following enactments that is to say sections 3 and 4 of the Railway Regulation Act 1840 sections 3 to 13 both included and 34 of the Regulation of Railways Act 1868 and sections 9 and 10 of the Regulation of Railways Act 1871 shall not apply to the company or the railway or the undertaking (*f*).

INCORPORATION OF COMPANY.

[4—9. *As ante, p. 552. These clauses, of course, are not inserted where the promoters are a local authority.*]

RAILWAYS AUTHORISED.

Power to
make
railways.

10. Subject to the provisions of this Order the *company* may make form lay down and maintain the railways hereinafter described in the lines and according to the levels and within the limits of deviation shown on the plans and sections with all proper rails plates works and conveniences connected therewith. The said railways are—

As to road
widening
&c.

11.—(1.) When constructing Railway (No.) the *company* shall at their own expense widen the road where it is shown on the plans about chains from the commencement of Railway (No.) as being feet wide so that the width thereof at such point shall be not less than feet.

(2.) When constructing Railway (No.) the *company* shall at their own expense widen the metalled portion of the road where

(*f*) The words in italics will be omitted where the promoters are a local authority.

It will be observed that Part III. (relating to debenture stock) of Companies Clauses Act, 1863, is omitted (see note (c) to sect. 11 of the Act).

If there are to be working agreements, Part III. (relating thereto) of Railways Clauses Act, 1863, should be incorporated.

As to the incorporation and exception of statutes in general, see the Act, sects. 11 (a) and (b), 12, 13 and 14, and Sched. II., and the notes thereto.

For the Scots equivalents of the Clauses Acts, see sect. 26 (7) of the Act and the notes thereto.

it is shown on the plans at mile furlongs or thereabouts from the commencement of Railway (No.) as being feet inches wide so that the width thereof at such point shall be not less than feet.

(3.) If the county council widen Bridge over the River the *company* shall defray the reasonable cost of such widening within two months after the completion thereof: Provided that the *company* shall not be required to pay for this purpose more in any case than pounds.

(4.) If any existing footpath is interfered with by the widening of any road as aforesaid the *company* shall at their own expense provide at the side of such road such footpath as the road authority [*where other than the corporation (g)*] may reasonably require.

[*Or* (1.) Wherever the metalled portion of any road upon which the railway is constructed is of a less width than feet the *company* shall concurrently with the construction of the railway wherever they may be able to do so without acquiring any buildings or incurring any other unreasonable expense in acquiring any land widen such road so that the said metalled portion thereof shall be of a width of at least feet.

(2.) Wherever the metalled portion of any road upon which the railway is to be constructed is of a less width than feet the *company* may so far as they are able so to do by making use of any waste land at the side of the metalled portion of any such road widen such metalled portion so that the same shall be of a width of not less than feet and unless the road authority otherwise agrees not more than feet: Provided that if in effecting any of the widenings referred to in this and the preceding sub-section the *company* interfere with or remove any footpath they shall subject to the provisions of the said sub-sections leave or provide a sufficient footpath to the reasonable satisfaction of the road authority.]

(5.) The metalled portion of such roads when widened shall be made up and completed at the expense of the *company* and to the reasonable satisfaction of the road authority [*where other than the corporation (g)*] and all alterations of footpaths kerbs channels drains and other works rendered necessary by such works shall be carried out to the like satisfaction.

(6.) When the aforesaid widenings have been completed the portion added to the road in any place shall be dedicated to the public as a highway and shall thereafter in all respects form part of the road.

(7.) If any difference arises under this section between the *company* and the county council or the road authority that difference shall be referred to arbitration under this Order.

(g) These words must be inserted where a local authority, which is not the sole road authority, is promoting. As to widenings, see *ante*, pp. 470, 481.

Power to
make
crossings &c.

12.—(1.) In addition to and in connection with the railways hereinbefore described the *company* may subject to the provisions of this Order and [*in respect of any part of the railway within the district of any local authority other than the corporation*] (*h*) with the consent of the local authority and [*upon any road of which the corporation are not the road authority with the consent of*] (*h*) the road authority make maintain alter and remove in any road such crossings passing places sidings junctions and other works as they find necessary or convenient for the efficient working of the railway or for providing access to any stables engine-houses power-houses carriage-houses sheds or works of the *company*: Provided that if before commencing to make alter or remove any such work as aforesaid in any road in the district of any such local authority or under any such road authority the *company* deliver to the authority a plan showing the position of the work proposed to be made altered or removed as the case may be and the authority do not within twenty-eight days give notice to the *company* of any objection such authority shall be taken to have consented to the making alteration or removal of such work as shown by the said plan.

(2.) Before commencing to make alter or remove any such work as aforesaid the *company* shall send to the Board of Trade a plan showing the position of the work proposed to be made altered or removed as the case may be and shall not make alter or remove the work except with the approval of the Board of Trade.

(3.) The consent of the local or road authority under this section shall not be unreasonably withheld and if any difference arises as to whether such consent is unreasonably withheld that difference shall be referred to arbitration under this Order.

Power to
generate
electricity.

13. For the purposes of working the railway the *company* [*may supply electrical energy from any generating station belonging to them and*] (*h*) may erect construct maintain and use dynamos and other electrical apparatus steam engines works and buildings and may use for the purposes aforesaid or any of them any land appropriated by them to that use or acquired by them by agreement under the powers of this Order but nothing in this section shall exempt the *company* from any indictment action or other proceeding for nuisance in the event of any nuisance being caused or permitted by them on any land so appropriated or acquired (*hh*).

Power to
lay down
conductors
&c.

14. Subject to the provisions of this Order the *company* may erect lay down and maintain on in under or over any road or the footpath of any road such posts conductors wires tubes mains plates boxes and apparatus as may be necessary or convenient either for the working of the railway or for forming connections with any generating station and the powers and obligations of the *company*

(*h*) Insert where a local authority is promoting.

(*hh*) See *ante*, pp. 227, 232.

under this Order with respect to the opening or breaking up of any road shall so far as they are applicable apply with respect to such footpaths: Provided that the powers of this section shall not be exercised with respect to any road or footpath [*of which the corporation are not the road authority*] (*i*) except with the consent (which shall not be unreasonably withheld) of the road authority and if any difference arises as to whether such consent is unreasonably withheld that difference shall be referred to arbitration under this Order (*i*).

15. The railway shall be constructed on a gauge of feet Gauge of
inches or such other gauge as may from time to time be deter- railway.
mined by the *company* with the consent of the Board of Trade (*k*).

16. Notwithstanding anything in this Order contained the *com-* Right of user
pany shall not acquire or be deemed to acquire any right other than only of road.
that of user of any road along or across which they lay the rail-
way or of any bridge culvert or other work upon which such road is
carried (*l*).

17. Nothing in this Order or in any by-law made under this Order shall take away or abridge the right of the public to pass along or across every part of any road along or across which the railway is laid except as hereinafter expressly provided with reference to carriages having flange wheels or wheels suitable only to run on the rails of the railway (*m*). Reservation
of right of
public to use
roads.

18. Nothing in this Order shall take away or affect any power of any road authority or of the owners commissioners undertakers or lessees of any railway tramway inland navigation or bridge to widen alter divert repair maintain or improve any road railway tramway inland navigation or bridge or to rebuild any bridge: Provided that such powers shall not be exercised so as to interfere with or affect the railway or the traffic thereon further or otherwise than may be necessary and that nothing in this Order shall entitle the *company* to compensation for any loss or damage sustained by them by reason of the reasonable exercise of such powers as aforesaid (*n*). Reservation
of powers to
widen roads
&c.

19. Nothing in this Order shall limit or interfere with the rights of any owner lessee or occupier of any mines or minerals to work the same nor shall any such owner lessee or occupier be liable to make good or pay compensation for any damage which may be occasioned to the railway by the working in the usual and ordinary course of mines or minerals (*o*). Reservation
of rights of
owners &c.
of mines.

(*i*) Insert the words in brackets where a local authority is promoting. As to the scope of this section, see note (*r*) to sect. 7 of the Act.

(*k*) See note (*z*) to sect. 11 of the Act, and Tramways Act, 1870, s. 25, and notes thereto.

(*l*) See Tramways Act, 1870, s. 57, and notes thereto.

(*m*) See Tramways Act, 1870, s. 62, and notes thereto.

(*n*) See Tramways Act, 1870, s. 60, and notes thereto, and note the proviso to the present section.

(*o*) See Tramways Act, 1870, s. 59, and notes thereto.

LANDS (*p*).

Appropriation and acquisition by agreement of lands.

20. The *company* may—

[(a) *subject to the sanction of the Local Government Board and under such conditions as the Board may prescribe appropriate and use for the purposes of the undertaking but subject to the provisions (if any) under which such lands were respectively acquired any lands not dedicated to public use vested in them being part of their corporate estates; and*

(b)] by agreement purchase and acquire for the purposes of the undertaking such lands as they may require and may sell or dispose of any such lands not required for such purposes;

Provided that they shall not at any time hold in pursuance of this section more than *five* [*ten*] acres of land and that nothing in this Order shall exempt the *company* from any indictment action or other proceeding for nuisance in the event of any nuisance being caused or permitted by them upon any land acquired [*or appropriated*] by them under this section (*g*).

Persons under disability may grant easements &c. Restrictions on taking houses of labouring class. Period for completion of works.

21. [*As ante, p. 554.*]

22. [*As ante, p. 554.*]

WORKS (*r*).

23. If the whole of the railway is not completed within *three* (*s*) years from the commencement of this Order the powers of the *company* under this Order shall cease :

Provided that the Board of Trade may allow an extension of time as regards the railway or some part of the railway only or may direct that the powers of the *company* shall cease under this section as regards some part of the railway only and not as regards the whole subject in either case to such conditions (if any) as they may see fit to impose.

Power to break up roads &c.

24. For the purpose of making laying down maintaining and renewing or altering the railway or any portion thereof the *company* [*may exercise as respects any road street or other highway any powers vested in them as the authority having the control of such road-street*

(*p*) See, generally, notes (*z*) and (*g*) to sect. 11 of the Act.

(*q*) Omit sub-s. (*a*) where the Order is granted to a local authority. Where powers of compulsory purchase are granted, sects. 12 to 15 of the preceding Model Order (p. 554) should be substituted for this section. See the notes thereto. As to nuisances, see *ante*, pp. 227, 232.

(*r*) See, generally, notes (*z*) and (*g*) to sect. 11 of the Act.

(*s*) See note (*g*) to sect. 11 of the Act. See, generally, Tramways Act, 1870, s. 18, and notes thereto, and compare sect. 83 of this Order. It will be observed that there is no provision here for cesser of powers on non-commencement or suspension of works.

or highway and so far as such powers do not extend they](t) may open and break up any road subject to the following regulations:—

- (1.) They shall seven days at least before the commencement of the work give to the road authority notice specifying the time at which they will begin the work and the portion of road proposed to be opened or broken up;
- (2.) They shall not open or break up or alter the level of any road except under the superintendence and to the reasonable satisfaction of the road authority unless that authority refuse or neglect to give such superintendence at the time specified in the notice or discontinue the same during the work;
- (3.) They shall pay all reasonable expenses to which the road authority is put on account of such superintendence;
- (4.) They shall not without the consent of the road authority open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length and in the case of any road exceeding a quarter of a mile in length the *company* shall not without the like consent leave a less interval than a quarter of a mile between any two places at which they may open or break up the road and they shall not without the like consent open or break up at any one time at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority but such bridge is not vested in the road authority any work which the *company* are empowered to construct and which affects or in anywise interferes with the structural works of such bridge shall subject to the provisions of this Order be constructed to the reasonable satisfaction of the owner or lessee of the bridge and under his superintendence (at the expense of the *company*) unless after notice to be given by the *company* seven days at least before the commencement of such work such superintendence is refused or withheld.

[Where the road in or upon which the railway is proposed to be laid down is crossed by any railway or tramway on the level any work which the *company* are empowered to construct and which affects or in anywise interferes with such railway or tramway or the traffic thereon shall be constructed and maintained to the reasonable satisfaction of the owner or lessee of such railway or tramway and under his superintendence (at the expense of the *company*) unless after notice to be given by the *company* seven days at least before the commencement of such work such superintendence is refused or withheld.]

If any difference arises under this section as to the reasonable satisfaction of the road authority or of the owner or lessee of any

(t) Omit these words where a local authority are not promoters. See, generally, sect. 26 of Tramways Act, 1870, and notes thereto.

bridge [*or of the owner or lessee of any railway or tramway*] or as to any expenses to be paid by the *company* that difference shall be referred to arbitration under this Order.

Approval by Board of Trade of mode of construction &c. of railway.

25. In addition to the requirements of the last preceding section of this Order the *company* shall at the same time as they give notice to the road authority of their intention to open or break up any road [*of which the corporation are not the road authority*] lay before the Board of Trade and the road authority [*and before breaking up any road of which they are the road authority they shall lay before the Board of Trade*] a plan showing the proposed mode of making laying down maintaining or renewing the railway and a statement of the materials intended to be used and the *company* shall not commence any works until such plan and statement have been approved by the Board of Trade and notwithstanding anything in this Order contained all such works shall be executed in accordance with such plan and statement approved as aforesaid (*u*).

Completion of works and reinstatement of road.

26. When the *company* have opened or broken up any portion of any road [*of which they are not the road authority*] (*x*) they shall be under the following further obligations; (namely)—

- (1.) They shall with all practicable speed and in all cases within four weeks at the most (unless the road authority otherwise consent in writing) complete the work on account of which they opened and broke up the road and (subject to the making maintenance or renewal of the railway) fill in the ground and make good the surface and to the reasonable satisfaction of the road authority restore the portion of the road to as good condition as that in which it was before it was opened or broken up and clear away all surplus paving metalling or other material or rubbish occasioned thereby;
- (2.) They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched and to be properly lighted at night;
- (3.) They shall pay all reasonable expenses of the repair of the road for six months after the same is restored so far as those expenses are increased by the opening or breaking up.

If any difference arises under this section as to the reasonable satisfaction of the road authority or as to the reasonable expenses to be paid by the *company* that difference shall be referred to arbitration under this Order.

Application of materials excavated from roads.

27. Any paving metalling or other material lawfully excavated by the *company* from any road under any road authority [*other*

(*u*) This provision does not appear in Tramways Act, 1870, but something similar will be found in the Model Provisional Order, *ante*, p. 427.

(*x*) Omit where a local authority are not promoters. See, generally, Tramways Act, 1870, s. 27, and notes thereto.

than the corporation](y) may be applied by the *company* in or towards the reinstating or the widening of any such road and the maintenance for six months after completion of the railway upon such road of so much thereof as the *company* are by this Order required to maintain and the *company* shall at their own expense if so required deliver the surplus paving metalling or other material not used for the purposes aforesaid at such place not being more than one mile from the place of excavation as the road authority shall appoint: Provided that if within seven days after notice in writing to the road authority that any such surplus is ready for delivery they shall not appoint a place for the delivery thereof such surplus shall vest in and belong to the *company*.

If any difference arises under this section between the *company* and any road authority that difference shall be referred to arbitration under this Order.

[27a. *The company shall not make any alteration in the level of any road [of which they are not the road authority] (z) without the consent of the road authority but if by reason of the construction of the railways any alteration is rendered necessary in the level of any road the reasonable expense of making such alteration shall be borne and paid by the company and if any question arises between the company and any road authority under this section that question shall be referred to arbitration under this Order.*]

Alteration of levels of roads.

28. [The following provisions shall apply with respect to any road of which the corporation are not the road authority (that is to say) :—] (a).

Repair of metallised portion of road where railway is laid.

(1.) [Where the railway is laid on the metallised portion of any road] the *company* shall at their own expense at all times make repair maintain and keep in good condition in such manner as the road authority and the *company* may agree or as in case of difference between them may be determined by the Board of Trade so much of any road whereon the railway is laid as lies between the rails of the railway and (where two lines of railway are laid by the *company* in any road at a distance of not more than four feet from each other) the portion of the road between such two lines of railway and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of the railway: Provided that the portion of the roads repairable as aforesaid by the *company* shall (unless except so far as it may be or may have been otherwise agreed between the *company* and the road authority or may be otherwise required by the Board of Trade) be made repaired and maintained with similar materials to those used in each case by the

(y) Omit where a local authority are not promoters. Compare model Provisional Order, *ante*, p. 431.

(z) Omit where a local authority are not promoters.

(a) These words will be omitted where a local authority are not promoters. See, generally, note (z) to sect. 11 of the Act, and sect. 28 of Tramways Act, 1870, and notes thereto.

road authority in maintaining and repairing the other portions of such roads in the same place except that the road authority may in all cases require the road on each side of each rail to be paved repaired and maintained with one row of granite setts laid to an average width on each side of each rail of at least six inches (*aa*).

(2.) If the *company* abandon the undertaking or any part of the same and take up the railway or any portion thereof they shall with all convenient speed and in all cases within six weeks at the most (unless the road authority otherwise consent in writing) fill in the ground and make good the surface and to the satisfaction of the road authority restore the portion of the road upon which the railway taken up was laid to as good a condition as that in which it was before such railway was laid thereon and clear away all surplus paving metalling or other material or rubbish occasioned by such work and shall in the meantime cause the place where the road is opened or broken up to be fenced and watched and to be properly lighted at night.

(3.) If the *company* fail to comply with the provisions of this section the road authority if they think fit may themselves at any time after seven days' notice to the *company* open and break up the road and do the works necessary for the repair and maintenance or restoration of the road to the extent in this section above-mentioned and the expense incurred by the road authority in so doing shall be repaid to them by the *company*.

(4.) Any difference (except such as is to be determined by the Board of Trade as hereinbefore provided) which arises under this section between the *company* and the road authority shall be referred to arbitration under this Order.

As to construction of railway in road.

29.—(1.) Before commencing to construct any part of the railway in any road the *company* shall deliver to the road authority a plan showing where it is proposed to construct the same as a single line or as a double line or as an interlacing line or otherwise and showing the proposed position thereof in the road and if a single or interlacing line the proposed position of the passing places.

[Or, *Before commencing to construct any part of the railway the corporation shall prepare a plan showing where it is proposed to construct the same as a single line or as a double line or as an interlacing line or otherwise and showing the proposed position thereof in the road and if a single or interlacing line the proposed position of the passing places and shall deliver to the road authority of any road of which the corporation are not the road authority a copy of the plan so far as it affects such road (b).*]

(2.) Such plan shall be open to the inspection of the owners lessees and occupiers of any lands or houses or other buildings abutting on the road and it shall be the duty of the *company* within seven days

(*aa*) Here may be added a provision for wood paving in front of public buildings.

(*b*) The alternative form is to be used where the promoters are a local authority.

after they deliver the copy as aforesaid to give public notice by advertisement or otherwise of the place where and the hours when such plan may conveniently be inspected.

(3.) If the road authority have any objection to the construction of the railway in accordance with such plan they may give notice thereof in writing to the *company* and any difference between the *company* and the road authority shall be determined by the Board of Trade: Provided that if such authority do not give such notice within twenty-eight days after the delivery of the plan they shall be taken to have agreed.

(4.) The *company* shall in any event submit the plan to the Board of Trade for their approval and shall not construct the railway except in accordance with the plan as approved by the Board of Trade.

30.—(1.) Where the railway is laid upon the unmetalled or waste land at the side of any road the *company* shall construct and maintain the same—

As to railway at side of road.

(a) so as to avoid to the reasonable satisfaction of the [any] road authority [other than the corporation] any interference with the proper drainage of the road; and

(b) so as not to cut off convenient access across the railway from the road to any land thereto adjoining and the *company* shall wherever necessary make and maintain metalled crossings and provide guard rails.

(2.) If any difference arises under this section between the *company* and the [such] road authority or the owner lessee or occupier of any such adjoining land as aforesaid that difference shall be referred to arbitration under this Order (c).

31.—(1.) At any time after the construction of the railway the *company* may subject to the provisions of this Order alter the position of the railway in any road or may lay down in any road a double line in place of a single or interlacing line or a single line in place of a double or interlacing line or an interlacing line in place of a double or single line on any part of the railway;

Alteration of lines after construction.

(2.) The *company* shall before commencing any works under this section deliver to the road authority a plan showing the position of the proposed works and the manner in which it is proposed to carry them out and such plan shall be open to the inspection of the owners lessees and occupiers of any lands or houses or other buildings abutting on the road and it shall be the duty of the *company* within seven days after they deliver the plan as aforesaid to give public notice by advertisement or otherwise of the place where and the hours when such plan will be open to inspection;

[Or, *The corporation shall before commencing any works under this section prepare a plan and shall deliver a copy thereof to the road authority if other than the corporation showing the position of the proposed works and the manner in which it is proposed to carry them*

(c) The words in brackets are to be used where a local authority are promoters. See *ante*, p. 482.

out and such plan shall be open to the inspection of the owners lessees and occupiers of any lands or houses or other buildings abutting on the road and it shall be the duty of the corporation within seven days after they deliver the copy as aforesaid to give public notice by advertisement or otherwise of the place where and the hours when such plan may conveniently be inspected;]

(3.) If the road authority have any objection to the proposed alterations or to the execution of the works in accordance with such plan they may give notice thereof in writing to the *company* and any difference between the *company* and the road authority shall be determined by the Board of Trade : Provided that if such authority do not give such notice within twenty-eight days after the delivery of the plan they shall be taken to have agreed ;

(4.) The *company* shall in any event submit the plan to the Board of Trade for their approval and shall not construct the railway except in accordance with the plan as approved by the Board of Trade ;

(5.) If at any time after the construction of the railway on any road such road is altered or widened by the road authority the *company* shall at their own expense if (under the circumstances) reasonably required to do so take up and remove such railway or any part thereof and reconstruct the same in such position in the road as the road authority and the *company* may agree or failing agreement as may be determined by the Board of Trade ;

(6.) Where owing to the erection after the commencement of this Order of buildings houses abut on both sides of any road on which the railway has been laid as a single line only and it appears to the road authority [*other than the corporation*] that for that reason an interlacing or double line should be laid instead of a single line in the road between such houses they may (if reasonable under the circumstances so to do) require the *company* to alter their line accordingly and the *company* shall comply with the requisition ;

(7.) If the *company* consider that any such requisition or the withholding of any such consent under this section as aforesaid is not reasonable they may appeal to the Board of Trade and the decision of that Board shall be final (*d*).

As to rails
of railway.

32.—(1.) The rails of the railway shall be such grooved or other rails as the Board of Trade may approve.

(2.) [*Where the railway is laid on the metalled portion of any road*] the rails of the railway shall be laid and maintained so that the uppermost surface thereof shall be on a level with the surface of the road : Provided that if any road authority [*other than the corporation*] (*e*) metal the unmetalled portion of or alter the level of any road along or across which any portion of the railway is laid or is

(*d*) The words in brackets are to be used where the promoters are a local authority.

(*e*) Omit where a local authority are not promoters. See note (*z*) to sect. 11 of the Act, and Tramways Act, 1870, s. 25, and notes thereto.

authorised to be laid the *company* shall at their own cost lay or (as the case may be) alter the rails so that the uppermost surface thereof shall be on a level with the surface of the road as metalled or altered.

33.—(1.) The *company* shall at all times maintain and keep in good condition and repair and so as not to be a danger or annoyance to the ordinary traffic on the road the rails of the railway and the substructure upon which the same rest.

Liability of
company to
maintain
rails &c

(2.) In case it is represented in writing to the Board of Trade by any road authority [*other than the corporation*] of any road in any district in which any portion of the railway is situate or by twenty ratepayers of such district that the *company* have made default in complying with the provisions of this section the Board of Trade may if they think fit direct an inspection by an officer to be appointed by the said Board and if such officer reports that the default mentioned in such representation has been proved to his satisfaction then and in every such case a copy of such report certified by a secretary or an assistant-secretary of the Board of Trade may be adduced as evidence of such default and of the liability of the *company* to such penalties in respect thereof as are by this Order imposed (*f*).

34. The road authority on the one hand and the company on the other hand [or, *The corporation on the one hand and any road authority other than the corporation on the other hand*] (*g*) may enter into and carry into effect and renew or vary contracts agreements or arrangements with respect to the [widening and making or] maintenance and repair of the whole or any portion of any road on which the railway is laid and the proportion to be paid by either of them of the expense of such works [*or of such maintenance and repair*].

Road authority and
company may
contract for
repairing &c.
roads on
which railway
is laid.

35.—(1.) Subject to the provisions of this Order and of any regulations made under this Order by the Board of Trade the size position design and construction of all posts standards and brackets and their several attachments erected in any road or the footpath of any road under any road authority shall be such as the authority and the company may agree or as in case of difference between them may be determined by the Board of Trade: Provided that—

As to posts
standards and
brackets.

(a) Subject to the approval of the Board of Trade under this section and with the consent of the owners lessees and occupiers of the houses or buildings to be utilised the company may and if the local authority so require and if such consent can be obtained for a reasonable consideration the company shall fix to houses or other buildings instead of erecting posts or standards for the purpose any brackets

(*f*) Omit the words in brackets where a local authority are not promoters. Compare the Model Provisional Order, *ante*, p. 428, and see notes to Tramways Act, 1870, s. 28.

(*g*) Omit where a local authority are not promoters. Compare Tramways Act, 1870, s. 29, and see notes thereto.

MODEL LIGHT RAILWAY ORDER (CLASS B.).

or attachments for the support of any overhead wires necessary for working the railway and any difference arising between the local authority and the company in the matter shall be determined by the Board of Trade; and

- (b) before the erection or alteration of any such posts standards brackets and attachments in such road or footpath the company shall deliver to the road authority a drawing and a description of the same and a plan showing the proposed position thereof and if the road authority do not within twenty-eight days give notice to the company of any objection such authority shall be taken to have agreed to the size position design and construction of such posts standards brackets and attachments as shown by the said drawing description and plan; and
- (c) if any post or overhead wire becomes owing to the construction of any new road or otherwise in the opinion of the road authority an obstruction the company shall alter the position thereof in such manner as the road authority direct but the company may appeal against such direction to the Board of Trade and the decision of the Board shall be final; and
- (d) if any post is erected upon the metalled portion of any road which is not lighted from the expiration of the hour after sunset until the beginning of the hour before sunrise the company shall bear the expense of providing and maintaining thereon between such hours a sufficient light for the purpose of lighting such post but not otherwise for the purpose of illumination; and
- (e) the company shall properly maintain and keep in good order and repair to the reasonable satisfaction of the road authority all such posts standards brackets and attachments; and
- (f) if any difference arises as to the reasonable satisfaction of the road authority that difference shall be determined by the Board of Trade.

[or (1) Subject to the provisions of this Order and of any regulations made under this Order by the Board of Trade the size position design and construction of all posts standards and brackets and their several attachments erected in any road or the footpath of any road under the jurisdiction of any road authority other than the corporation shall be such as the road authority and the corporation may agree: Provided that—

- (a) subject to the approval of the Board of Trade under this section and with the consent of the owners lessees and occupiers of the houses or buildings to be utilised the corporation may fix to houses or other buildings instead of erecting such posts or standards for the purpose any brackets or attachments for the support of any overhead wires necessary for working the railway; and
- (b) before the erection of any such posts standards brackets and attachments in such road or footpath the corporation shall deliver to the road authority a drawing and a description

of the same and a plan showing the proposed position thereof and if the road authority do not within twenty-eight days give notice to the corporation of any objection such authority shall be taken to have agreed to the size position design and construction of such posts standards brackets and attachments as shown by the said drawing description and plan; and

(c) if any post or overhead wire becomes owing to the construction of any new road or otherwise in the opinion of any such road authority an obstruction the corporation shall alter the position thereof in such manner as the road authority may reasonably require; and

(d), (e) *As on p. 600.*

(f) if any difference arises under this sub-section between the corporation and any other authority that difference shall be determined by the Board of Trade.]

(2.) The local authority [*of any district outside the borough*] shall upon giving not less than fourteen days' notice to the *company* of their desire to do so have the right without payment to use any posts standards and brackets erected in the streets within their district for the support of any electric wires or lamps or any gas lamp belonging to the local authority or to any contractor with them for the lighting of public lamps: Provided that the said notice shall be accompanied by sufficient plans to be approved by the *company* (such approval not being unreasonably withheld) showing the method and position in which it is proposed that such wires or lamps should be supported and that in placing maintaining or altering such wires or lamps no obstruction shall be caused to the working by the *company* of the undertaking and no unnecessary damage shall be caused to such posts standards or brackets and that if any damage is caused thereto the local authority shall be responsible for and shall make good the same to the *company*: Provided also that any difference arising under this sub-section between the *company* and the local authority shall be referred to arbitration under this Order.

(3.) Before commencing to fix any brackets or attachments to houses or other buildings or to erect or alter any posts standards or brackets and before any wires or lamps [*of the local authority*] are supported on any such posts standards or brackets under this section plans showing where any brackets or attachments are to be fixed to houses or other buildings and the position design and construction of the posts standards or brackets and where wires or lamps [*of the local authority*] are to be supported on any such posts standards or brackets the method and position in which they are to be supported must be sent by the *company* to the Board of Trade and the brackets or attachments shall not be fixed to houses or other buildings nor shall the posts standards or brackets be erected or altered nor shall wires or lamps be supported on any such posts standards or brackets except according to plans approved by the Board of Trade.

(4.) When any such posts and standards have been fixed or

erected in any road the *company* shall not make any alteration in the position of the same except with the consent of the road authority (which consent shall not be unreasonably withheld) and the *company* shall at the same time as they send plans as required by this section to the Board of Trade give notice in writing of any proposed alteration to the owners lessees and occupiers of any lands or houses which abut on the road where the alteration will be made or which will be affected thereby: Provided that before making any such alteration which would affect any such wires or lamps as are hereinbefore referred to the *company* shall give not less than fourteen days' notice to the person owning the same: Provided also that any difference arising under this sub-section between the *company* and the road authority shall be determined by the Board of Trade.

(5.) Advertisements shall not be displayed upon any such posts standards or brackets (*h*).

For the protection of owners of bridges and culverts.

36.—(1.) The *company* shall so construct maintain and use the railway where laid on a road under or upon any bridge or culvert belonging to or maintainable by any person [*other than the corporation*] (in this section referred to as "the owner") as not injuriously to affect the same and in the event of any injury or damage being caused to any such bridge or culvert by the construction maintenance or user of the railway the *company* shall at their own expense and to the reasonable satisfaction of the owner make good and restore the same and if in consequence of any such injury or damage it becomes or if the construction of the railway or the user thereof will render it necessary that such bridge or culvert should be rebuilt or strengthened the owner shall give to the *company* notice accompanied by sufficient plans and specifications of the intended works and may after one month from the date of the notice (or forthwith in case of emergency) proceed with all due despatch to execute all such works as may be reasonably necessary and the owner may recover from the *company* all moneys reasonably expended by him in the execution thereof;

(2.) The *company* shall give to the owner fourteen days' notice in writing of the intention to commence any works under or upon or which may affect or interfere with the structural works of any such bridge or culvert and shall at the same time send sufficient plans sections specifications and other information to show the nature of such works and such works shall be constructed and thereafter maintained according to the plans sections and specifications and under the superintendence (if such superintendence shall be given) and to the reasonable satisfaction of the owner: Provided that the *company* shall not commence any such works until such plans sections and specifications have been approved by the owner or in case of difference between the owner and the *company* by an arbitrator to be appointed as hereinafter provided and if the owner

(*h*) See the cases *ante*, p. 228.

fails to signify his disapproval thereof within fourteen days after receiving the said plans sections and specifications he shall be deemed to have approved;

(3.) Any works under this section in so far as they affect or interfere with any such bridge or culvert shall if the owner so require be executed by the owner at the reasonable expense of the *company*. If the owner intends so to execute such works he shall give to the *company* notice of his intention and shall commence execute and complete the said works with all reasonable despatch: Provided that unless the owner gives the said notice to the *company* within fourteen days after receiving from the *company* the notice hereinbefore prescribed the *company* may in accordance with such plans sections and specifications and under such superintendence as aforesaid themselves proceed to execute the works;

(4.) If any such bridge or culvert as aforesaid upon which the railway is laid is altered widened or rebuilt by the owner the owner may require the *company* to alter the railway in such manner as the circumstances of the case may reasonably require and shall at the same time send sufficient plans specifications and other information to show the nature of the alteration required;

(5.) If the owner hereafter requires to widen lengthen strengthen reconstruct alter or repair any bridge upon or under which the railway is laid or the approaches thereto or to widen or alter any railway thereunder or to lift or support any such bridge the *company* shall afford to the owner all reasonable and proper facilities for the purpose and if it should be necessary for such purpose that the working or user of any part of the railway upon or under such bridge or approaches be wholly or in part stopped or delayed or that such part of the railway be wholly or in part taken up or removed and if the owner accordingly gives to the *company* seven days' notice in writing (or in case of emergency such notice as may be reasonably practicable) requiring such stoppage delay taking up or removal then the working or user of such part of the railway shall be stopped or delayed or such part of the railway shall be taken up or removed as stated in such notice at the reasonable expense of the *company* and under their superintendence (if they shall give such superintendence) but no such working or user shall be stopped or delayed for a longer period than may be necessary for effecting such purpose as aforesaid and such part of the railway shall be restored with all possible despatch and in such case the owner shall not be liable to pay compensation in respect of such stoppage delay or taking up or removal as aforesaid;

(6.) If any difference arises under this section between the *company* and the owner that difference shall be referred to arbitration under this Order.

[*Here insert any other protective clauses. Compare ante, pp. 561 sqq., and see note (l) to sect. 11 of the Act.*]

For the protection of the
Railway
Company
and of the
Canal
Company.

[36a. *The following provisions for the several protection of the Railway Company and of the Canal Company (in this section referred to as "the protected company") shall except so far as it may be otherwise agreed in writing between the company and the protected company have effect (that is to say):—*

- (1.) *All works by this Order authorised where the same will be made upon across or over any bridge or other work belonging to the protected company shall be executed so as not to interfere with the structure of any such bridge or other work and according to plans sections and specifications to be previously submitted to and approved by the protected company (such approval not being unreasonably withheld). All such works shall be executed and thereafter maintained according to the plans sections and specifications so approved and under the superintendence if such superintendence shall be given and to the reasonable satisfaction of the protected company.*
- (2.) *If in consequence of the existence or user of the railway it becomes necessary that any bridge of the protected company should be strengthened the protected company shall give notice to the company and may after fourteen days from the date of the notice (or forthwith in case of emergency) proceed with all due despatch to execute all such works as may be reasonably necessary but in all things at the expense of the company and the protected company may recover from the company all moneys reasonably expended by them in the execution of such works as aforesaid.*
- (3.) *The company shall on demand pay to the protected company the reasonable expense of the employment by the protected company during the execution or repair by the company under this Order of any work affecting any bridge railway canal or other work belonging to the protected company of a sufficient number of inspectors watchmen and signalmen to be appointed by the protected company for preventing all interference obstruction danger and accident from any of the operations acts or defaults of the company or their contractors or of any person in the employ of either of them or otherwise.*
- (4.) *The company shall not in any manner in the execution maintenance or repair of any of their works obstruct or interfere with the free uninterrupted and safe user of any railway canal or other work belonging to the protected company or any traffic thereon.*
- (5.) *The company shall be responsible for and make good to the protected company all losses damages and expenses which may be occasioned to the protected company by or by reason of the execution or failure of any of the intended works or by or by reason of any act or omission of the company or their contractors or of any person in the employ of either of them and the company shall effectually indemnify the protected company from all claims and demands upon or against them by reason of such execution or failure or of any such act or omission.*
- (6.) *If the protected company shall hereafter require to widen lengthen strengthen re-construct alter or repair any bridge belonging to or maintainable by them or the approaches thereto or to widen or alter their railway or canal or to lift*

or support any such bridge the company shall afford to the protected company all reasonable and proper facilities for those purposes or any of them and if the protected company shall find it necessary for any such purposes that the working or user of any portion of the railway upon such bridge or approaches shall be wholly or in part stopped or delayed or that such portion of the railway shall be wholly or in part taken up or removed and the protected company shall give to the company seven days' notice in writing (or in case of emergency such notice as may be reasonably practicable) requiring such stoppage delay taking up or removal then the working or user of such portion of the railway shall be stopped or delayed or such portion of the railway shall be taken up or removed as stated in such notice at the reasonable expense of the company and under their superintendence if they shall give such superintendence but the working or user of such portion shall not be stopped or delayed for a longer period than may be absolutely necessary for effecting such purposes as aforesaid and such portion of the railway shall be restored with all possible despatch and the protected company shall not be liable for any compensation claims damages or expenses in respect of such stoppage delay or taking up or removal as aforesaid.

- (7.) Any additional expense in the maintenance of any such bridge or other work occasioned to the protected company by the construction or user of the railway shall be borne by the company.
- (8.) The protection afforded to the protected company by this section shall not extend to the case of any interference with the wires lines and apparatus of the protected company or the currents therein to which the section of this Order of which the marginal note is "Special provisions as to use of electric power as motive power" applies but the protected company shall not by reason of being specially protected as regards other matters under this section lose as regards any such interference any protection to which they are otherwise entitled.
- (9.) If any difference arises under this section between the company and the protected company that difference shall be referred to arbitration under this Order.

36b.—(1.) The company shall give to the Mayor Aldermen and Burgesses of the Borough of and to the Urban District Council (in this section referred to as "the authorities") not less than fourteen days' notice of any works required to be carried out for the purpose of effecting any junction of the railway with the existing tramways in the urban district of or for the purpose of making maintaining altering or renewing any points or crossings in connection therewith and with such notice plans sections and specifications of the proposed works shall be submitted to and approved by the authorities or in case of difference between them or either of them and the company by arbitration under this Order: Provided that if the authorities do not within fourteen days after service of the notice signify to the company any objections thereto they shall be taken to have approved them.

For the protection of certain tramway authorities.

(2.) The company shall execute and thereafter maintain such works in accordance with the plans sections and specifications approved as

aforesaid to the reasonable satisfaction of the authorities and any difference arising in respect of such satisfaction shall be referred to arbitration under this Order (l).]

Danger from
breaking or
falling wires.
Provision as
to gas and
water
companies &c.

37. *As ante*, p. 565.

38. For the purposes of making forming laying down maintaining repairing or renewing the railway the *company* may where and as far as it is necessary or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same alter the position of any mains pipes or apparatus for the supply of gas or water or any tubes wires or apparatus for telegraphic or other purposes subject to the provisions of this Order and also subject to the following restrictions (that is to say):—

- (1.) Before laying down or altering as aforesaid the railway in a road or place in which any such mains pipes tubes wires or apparatus (hereinafter in this section referred to as “mains or apparatus”) may be laid the *company* shall whether they contemplate altering the position of any mains or apparatus or not give seven days’ notice to the company body or person to whom such mains or apparatus may belong or by whom they are controlled (hereinafter in this section referred to as “the owners”) of their intention to lay down or alter the railway and shall at the same time deliver a plan and section of the proposed work. If it should appear to the owners that the laying down or alteration of the railway as proposed would endanger any such mains or apparatus or interfere with or impede the supply of water or gas or the telegraphic or other communication the owners may give notice to the *company* to lower or otherwise alter the position of the said mains or apparatus in such manner as may be considered necessary and all alterations to be made under this section shall be made with as little detriment and inconvenience to the owners or to the inhabitants of the district as the circumstances will admit and under the superintendence of the owners if they think fit to attend after receiving not less than forty-eight hours’ notice for that purpose which notice the *company* are hereby required to give;
- (2.) The *company* shall not remove or displace any mains or apparatus or other works belonging to or controlled by the owners or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or apparatus without the consent of the owners or in any other manner than the owners shall approve until good and sufficient mains or apparatus and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communications as sufficiently as the same was supplied by the mains or apparatus proposed to be removed or displaced shall at the expense of the *company* have been first made and laid down in place thereof and ready for use and to the satisfaction of the owners;

(l) To deal with interference otherwise than by a junction parts of section 36a above may be adapted.

- (3.) The *company* shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to the owners or relating to telegraphs and shall lay down any water main or water pipe if so required by the owners at a depth not less than that at which it was previously laid and unless otherwise agreed between the *company* and the owners in every case so as to leave a covering of at least thirty inches from the surface of the road above such main or pipe;
- (4.) The *company* shall make good all damage done by them to property belonging to or controlled by the owners and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property or with the private service pipes of any person supplied by the owners with water or gas;
- (5.) If by any such operations as aforesaid the *company* interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which such supply shall be so interrupted;
- (6.) Any works to be executed pursuant to this section in relation to the lowering or altering the positions of any mains or apparatus shall if the owners so desire be executed by them at the reasonable expense of the *company* and in that case the owners shall within seven days of receiving notice from the *company* as aforesaid give notice of their intention so to execute such work and shall commence execute and complete the same with all reasonable despatch;
- (7.) Any difference arising under this section between the *company* and the owners shall be referred to arbitration under this Order;
- (8.) Nothing in this section shall apply in the case of any electric lines or works of any undertakers the position of which may be altered under section 15 of the Electric Lighting Act, 1882 (*U*).

39.—(1.) Where the railway will interfere with any sewer drain watercourse subway defence or work or will affect the sewerage or drainage of any district the *company* shall give to the proper authority [*if other than the corporation*] (*m*) fourteen days' notice in writing of their intention to commence the railway with all necessary particulars relating thereto and they shall not commence the same without the approval of such authority unless such authority fail to signify their approval or disapproval or give other directions within the said period of fourteen days.

For protection of sewers &c.

(2.) The *company* shall comply with all reasonable directions of the said authority and shall provide in such manner as such authority shall reasonably require for the protection of the said sewers and works and shall repay to the said authority any reasonable expenses to which they may be put by reason of the railway.

(*U*) 45 & 46 Vict. c. 56. The section provides for the removal, on terms, by undertakers of the apparatus of other persons and authorities, and *vice versâ*. See Tramways Act, 1870, s. 30, and notes thereto.

(*m*) Omit where the promoters are not a local authority.

(3.) All such protective works shall be done by the *company* under the superintendence (if such superintendence shall be given) of the said authority or may be executed by the said authority if they shall so desire at the reasonable expense of the *company*. If such authority intend to execute such works themselves they shall and where they have received such notice as aforesaid from the *company* within fourteen days after such receipt give to the *company* notice accompanied by sufficient particulars of that intention and shall commence execute and complete the works with all reasonable despatch.

(4.) If any difference arises under this section between the *company* and any authority that difference shall be referred to arbitration under this Order (*n*).

Right of
access to
sewers &c.

40. Any local or road authority [*if other than the corporation*] shall in the case of any road on which the railway is laid have at all times free access to and communication with all their sewers and drains and power to lay lateral and private drains to communicate therewith without the consent or concurrence of the *company*.

Rights of
authorities
and com-
panies &c. to
open roads.

41.—(1.) Nothing in this Order shall take away or abridge any power to open or break up any road or the footpath of any road along or across which the railway is laid or any other power vested in any local or road authority (*nn*) for any of the purposes for which such authority is respectively constituted or in any company body or person for the purpose of laying down repairing altering or removing any pipe or apparatus for the supply of gas or water or any tubes wires or apparatus for telegraphic or other purposes but in the exercise of such power every such local and road authority [*other than the corporation*] (*o*) company body or person shall be subject to the following restrictions (that is to say) :—

- (a) They shall cause as little detriment or inconvenience to the *company* as circumstances will admit ;
- (b) Before they commence any work whereby the traffic on the railway will be interrupted they shall (except in cases of urgency when no notice shall be necessary) give to the *company* notice of their intention to commence such work specifying the time at which they will begin to do so such notice to be given eighteen hours at least before the commencement of the work ;
- (c) They shall not be liable to pay to the *company* any compensation for injury done to the railway by the execution of such work or for loss of traffic occasioned thereby or for the reasonable exercise of the powers so vested in them as aforesaid ;
- (d) Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so

(*n*) See Tramways Act, 1870, s. 31, and notes thereto.

(*nn*) It is proposed to add here " or sewerage or drainage authority."

(*o*) Omit where the promoters are not a local authority. See Tramways Act, 1870, s. 32, and notes thereto.

require the *company* shall either stop traffic on the portion of the railway to which the notice shall refer where it would otherwise interfere with such work or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall be completed with all reasonable despatch;

- (e) No such authority company body or person shall execute such work so far as it immediately affects the railway except under the superintendence of the *company* unless the *company* refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work and they shall execute such work at their own expense and to the reasonable satisfaction of the *company*: Provided that any additional expense imposed on them by reason of the existence of the railway in any road or place where any such mains pipes tubes wires or apparatus belonging to them shall have been laid before the construction of the railway shall be borne by the *company*.

(2.) If any difference arises under this section between the *company* and any such authority company body or person that difference shall be referred to arbitration under this Order.

[41a. *A local or road authority shall not be responsible to the company for any damage sustained by the company in consequence of any road subsiding after the construction or re-laying of any sewer drain gas or water main or any other pipes and apparatus has been completed and the ground above the same filled in provided such work shall have been executed with all care and in a proper and workmanlike manner. If any difference arises as to the mode in which the work is executed that difference shall be referred to arbitration under this Order.*]

42. Where the railway is constructed or intended to be constructed or reconstructed over any manhole or entrance into any sewer of a local authority or so close to such manhole or entrance as to make the use thereof dangerous the *company* shall at their own expense if required by the local authority [and if in the district of any local authority or upon any road under any road authority other than the corporation upon being required by such authority so to do] alter the position of such manhole or entrance in such manner as may be reasonably necessary and [if in such district or upon such road as may also be] approved by the local [such] authority or the local [such] authority may at their own option at the reasonable expense of the *company* make such alteration in the position of such manhole or entrance. If such authority intend to execute such works themselves they shall commence execute and complete the same with all reasonable despatch and in any case where the railway is already constructed they shall give to the *company* not less than forty-eight hours' notice before they commence the works.

Agreements
with adjoining
owners
&c.

*Penalty unless
the railway is
opened within
the limited
time.*

*Application
of penalty.*
Inspection
by Board of
Trade.

Power for
company to
use railway
with flange-
wheeled
carriages &c.

Penalty for
persons using
railway with
flange-
wheeled
carriages &c.

Traffic upon
railway.

Service of
passenger
cars.

*Waiting-rooms
for passengers.*

If any difference arises under this section between the *company* and the [any] local authority that difference shall be referred to arbitration under this Order.

43. *As ante*, p. 565.

44, 45. *As ante*, p. 565, *compensation for road authorities being added (o).*

46. The railway shall not nor shall any part thereof be opened for public traffic until the same has been inspected and certified to be fit for such traffic by the Board of Trade (*p*).

PROVISIONS AS TO WORKING (*q*).

47. The *company* may use on the railway carriages with flange wheels or wheels suitable only to run on the rails of the railway and subject to the provisions of this Order the *company* shall have the exclusive use of the railway for carriages with flange wheels or other wheels suitable only to run on the rails of the railway: Provided that no carriage or engine used on the railway shall exceed six feet six inches in width or such other width as may be prescribed by the Board of Trade (*r*).

48. If any person (except [*under a lease from or*] (*u*) by agreement with the *company* or otherwise as by this Order provided) uses the railway or any portion thereof with carriages having flange wheels or other wheels suitable only to run on the rails of the railway such person shall for every such offence be liable to a penalty not exceeding twenty pounds (*s*).

49. The railway may be used for the purpose of conveying passengers goods minerals parcels and animals (*t*).

50. The *company* shall at all times after the opening of the railway or any portion thereof for public traffic provide such service of cars as may be reasonably required in the public interests and the *company* shall be liable to a penalty not exceeding five pounds for every day on which they fail to comply with the provisions of this section. Any difference which may arise as to the service of cars required in the public interests may be determined on the application of the *company* or of any [*other*] (*u*) local authority or of not less than twenty ratepayers of any district in which the railway is situate by the Board of Trade whose decision shall be final.

[50a. *The company shall if and so long as required by any local authority provide and maintain a waiting-room for passengers in the*

(*o*) See sect. 11 of the Act and note (*i*) thereto. These two sections are only inserted where a deposit has not to be made. Thus they will be inserted where the promoters are a local authority.

(*p*) See sect. 25 of Tramways Act, 1870, *ad fin.*, and notes thereto.

(*q*) See, generally, note (*a*) to sect. 11 of the Act.

(*r*) See note (*a*) to sect. 11 of the Act, and sect. 34 of Tramways Act, 1870, and notes thereto.

(*s*) See Tramways Act, 1870, s. 54, and notes thereto.

(*t*) See note (*a*) to sect. 11 of the Act.

(*u*) Omit where a local authority are not promoters.

district of such local authority in a situation on the route of the railway to be approved by the local authority (x).]

51. If the *company* at any time find it necessary or desirable to remove snow or other matter impeding the traffic on the railway *[where it is laid in any road of which the corporation are not the road authority]* (y) the *company* shall at their own expense remove the snow or other matter to the side of the road but so as not to impede or obstruct the ordinary traffic on the road and the *company* shall not use salt or other unsuitable material for thawing the snow on any road: Provided that any dirt or other matter removed by the *company* from the grooves of the rails of the railway shall not be allowed to remain on the road but shall be at once taken away by the *company* (z).

As to removal of snow &c.

52. Nothing in this Order shall limit the powers of any local authority road authority or police to regulate the passage of any traffic along or across any road along or across which the railway is laid and such authority or police may exercise their authority as well on as off the railway and with respect as well to the traffic of the *company* as to the traffic of other persons (a).

Saving for power to regulate traffic on roads.

53. Subject to the provisions of this Order and of any regulations made under this Order by the Board of Trade and of any by-laws for the time being in force with respect to the railway any local authority or road authority *[other than the corporation]* (b) may at such times and in such manner as they think fit between the hours of twelve at night and five in the morning but so as not to unduly impede obstruct or interfere with the ordinary traffic on the railway and after giving due notice to the *company* of their intention so to do use the railway within their district *[or upon any road under their jurisdiction]* (b) by carriages having flanged or suitable wheels and moved by horses or otherwise for the removal of night soil and house refuse and for the conveyance of scavenging stuff road metal and other materials required by the works of such authority free of all tolls and charges in respect of such use. Subject as aforesaid any such authority may enter into agreements with the *company* for the purposes of this section and such authority shall have power to form connections between the railway and any yards or works belonging to such authority provided that in the construction of any such connection no damage shall be done to the railway and they shall have first submitted to the *company* plans showing such connections or works and the mode of constructing the same and if any difference arises as to such plans or the mode of constructing such works that difference shall be referred to arbitration under this Order:

Local authorities and road authorities may use railway for certain purposes.

(x) See note (z) to sect. 11 of the Act.

(y) Omit where the promoters are not a local authority.

(z) See *Ogston v. Aberdeen District Tramways Co.*, ante, p. 234, and cases cited in note (e) to sect. 28 of Tramways Act, 1870.

(a) See Tramways Act, 1870, s. 61, and notes thereto.

(b) Omit where a local authority are not promoters.

Provided that such authority shall not save by agreement with the *company* be entitled to use or employ for such purposes any carriages trucks horses electric current or other motive power or officers and servants of the *company*: Provided also that such authority shall indemnify the *company* against any damage done to the permanent way by such use.

Temporary railways may be made where necessary.

54.—(1.) Where by reason of the execution of any work affecting the surface or soil of any road along which the railway is laid it is in the opinion of [*the corporation or of the road authority where the corporation are not*](*c*) the road authority necessary or expedient temporarily to remove or discontinue the use of the railway the *company* may (with the approval of the Board of Trade subject to such conditions and requirements as the [*such*] road authority may with the like approval impose) construct and maintain in the same or any adjacent road so long as occasion may require a temporary railway or temporary railways in place of the railway removed or discontinued.

(2.) If any difference arises between the *company* and the road authority as to the mode of constructing any temporary railway that difference shall be referred to arbitration under this Order.

Running powers by agreement.

[54a. *The company may by agreement with the Tramways Company Limited or other the owners at any time of any of the tramways or any portion thereof belonging to that company at the commencement of this Order (in this section referred to as "the owners") enter upon run over and use with their engines carriages and servants for the purposes of traffic of all kinds the whole or any part of the tramways owned or worked by the owners together with all stables carriage-sheds offices warehouses stations sidings junctions machinery works and conveniences of or connected therewith: Provided that—*

(a) *An agreement made under this section by any owner of the tramways shall not affect any local authority purchasing the tramways under section 43 of the Tramways Act 1870; and*

(b) *The terms and conditions upon which the powers conferred by this section are agreed to be exercised and the tolls or other considerations to be paid therefor shall be subject to the approval of the Board of Trade(d).]*

Working agreements.

[54b.—(1.) *Subject to the provisions of this Order the company on the one hand and the Tramways Company Limited or other the owners at any time of any of the tramways or any portion thereof now belonging to them on the other hand may enter into and carry into effect and rescind contracts agreements and arrangements with respect to the following purposes or any of them (that is to say):—*

Or, Subject to the provisions of this Order the corporation may enter into carry into effect and rescind agreements with respect to the following purposes or any of them (that is to say):—

Or, Subject to the provisions of this Order the corporation on the one

(c) Insert the words in brackets where a local authority are promoters.

(d) See note (b) to sect. 11 of the Act.

hand and the authority of any district adjoining the borough and owning or working light railways or tramways connected with the railway after deciding to do so by a special resolution or any company owning or working any such light railways or tramways in any such district on the other hand may enter into carry into effect and rescind agreements with respect to the following purposes or any of them (that is to say):—

The use working management and maintenance by any such authority or company as aforesaid of the railway and the running over of any such light railways and tramways on the one hand or of the railway on the other hand or any part thereof respectively or any works connected therewith respectively and the employment of officers and servants ;

The supply and maintenance under and during the continuance of any agreement for any light railways or tramways of the contracting parties being worked and used by the other of them of stock and plant necessary for the purpose of such agreement ;

The payments to be made and the conditions to be performed with respect to the matters aforesaid ;

The management regulation interchange collection transmission and delivery of traffic upon or coming from or destined for the light railways or tramways of either contracting party ;

The fixing collection payment appropriation apportionment and distribution between the contracting parties of the rates income and profits levied taken or arising from the light railways or tramways and works of the contracting parties or any part thereof ;

but an agreement made under this section shall not affect any local authority purchasing the tramways or any portion thereof under section 43 of the Tramways Act 1870 (e).

(2.) Any such agreement shall be submitted to and shall be subject to the approval of the Board of Trade.

Or, Any such agreement shall be submitted to and shall be subject to the approval of the Board of Trade and if the agreement be made with any local authority company or person working but not owning a light railway or tramway affected thereby notice of the proposed agreement and of the terms thereof shall be given by such authority company or person to the owner at least twenty-eight days before the agreement is submitted to the Board of Trade and before giving their approval the Board of Trade shall consider any objections which such owner may lay before them.]

55. *The company or any authority company or person using the railways or any portion thereof under the authority of this Order may with the consent of the Board of Trade but subject to the*

Power to enter into agreements with respect to traffic &c.

(e) See note (b) to sect. 11 of the Act. Omit this sentence in the case of local authorities.

provisions of this Order enter into agreements with any company or person with respect to the receiving from or forwarding to any such company or person any passengers goods minerals parcels or animals and the fixing collecting and apportionment of tolls charges or other receipts arising in respect of such traffic.

Motive
power.

56. The carriages used on the railway may be moved by animal power or by mechanical power subject to the following provisions; (that is to say)—

- (a) No mechanical power shall be used except with the consent of and according to a system approved by the Board of Trade;
- (b) No animal power nor mechanical other than electric power shall be used except with the consent of the local authority and of the [*any*] road authority [*other than the corporation with respect to any portion of the railway within the district of such local authority or upon any road under such road authority*] but that consent in the case of animal power shall not be unreasonably withheld and any difference which arises as to whether such consent is unreasonably withheld shall be referred to arbitration under this Order (*f*).

Board of
Trade
regulations.

57.—(1.) The Board of Trade shall make regulations (in this Order referred to as “Board of Trade general regulations”) for securing to the public and to passengers all reasonable protection against danger arising from the use under this Order of mechanical power on the railway and in particular may by those regulations make provision for all or any of the following purposes; (that is to say)—

- For regulating the rate of speed to be observed in travelling on the railway;
- For regulating the number of carriages which may be run upon the railway coupled together;
- For regulating the use of any bell whistle or other warning apparatus fixed to the engines or carriages;
- For regulating the lights which the *company* shall fix and maintain on or in the trains or carriages used on the railway;
- For regulating the dimensions form and mode of construction of carriages;
- For regulating the emission of smoke or steam from engines used on the railway;
- For requiring the provision of brakes and other fittings including fenders and cow-catchers on the engines used on the railway;
- For providing that engines and carriages shall be brought to a stand at any special points or under any special circumstances;

(*f*) Insert the words in brackets where a local authority are promoters.

For regulating the entrance to exit from and accommodation in the carriages used on the railway and the protection of passengers from the machinery of any engine used for drawing or propelling such carriages ;

For providing for the due publicity of all Board of Trade regulations (whether general or special) and of all by-laws in force in relation to the railway by exhibition of the same in conspicuous places on the carriages and elsewhere.

(2.) The Board of Trade shall make regulations (in this Order referred to as "Board of Trade special regulations") for regulating the use of electric power on or in connection with the railway and in particular shall by those regulations make provision with respect to such matters as are to be prescribed or provided for under the special provisions of this Order as to the use of electric power as motive power.

(3.) If the Board of Trade are of opinion—

(a) that the *company* have made default in complying with the provisions of this Order or of the Board of Trade general or special regulations whether a penalty in respect of such non-compliance has or has not been recovered or

(b) that the use of any mechanical power as authorised under this Order is a danger to the passengers or the public they may by order either direct the *company* to cease to use such power or permit the use thereof to be continued only subject to such conditions as the Board of Trade may impose and the *company* shall comply with every such Order.

(4.) If the *company* use mechanical power on the railway contrary to the provisions of this Order or of the Board of Trade general or special regulations or refuse or neglect to comply with any Order made under this section they shall for every such offence be liable to a penalty not exceeding ten pounds and also in the case of a continuing offence to a further penalty not exceeding five pounds for every day during which the offence is continued after conviction thereof.

(5.) Any person owning working or running carriages over the railway shall be subject to the provisions of this section (including the penal provisions thereof) in the same manner and to the same extent as the *company* (g).

58. The following additional provisions shall apply to the use of electric power under this Order unless such power is entirely contained in and carried along with the carriages (that is to say) :—

Special provisions as to use of electric power as motive power.

(1.) The *company* shall employ either insulated returns or uninsulated metallic returns of low resistance ;

(2.) The *company* shall take all reasonable precautions in con-

(g) See the model forms of regulations, *ante*, pp. 352 *seq.*, and compare Tramways Act, 1870, s. 64, and notes thereto.

structing placing and maintaining their electric lines and circuits and other works of all descriptions and also in working the undertaking so as not injuriously to affect by fusion or electrolytic action any gas or water pipes or other metallic pipes structures or substances or to interfere with the working of any wire line or apparatus used for the purpose of transmitting electric power or of telegraphic telephonic or electric signalling communication or the currents in such wire line or apparatus ;

- (3.) The electric power shall be used only in accordance with the Board of Trade general or special regulations and in such regulations provision shall be made by the Board of Trade special regulations for preventing fusion or injurious electrolytic action of or on gas or water pipes or other metallic pipes structures or substances and for minimising as far as is reasonably practicable injurious interference with the electric wires lines and apparatus of other parties and the currents therein whether such lines do or do not use the earth as a return ;
- (4.) The *company* shall be deemed to take all reasonable precautions against interference with the working of any wire line or apparatus if and so long as they adopt and employ at the option of the *company* either such insulated returns or such uninsulated metallic returns of low resistance and such other means of preventing injurious interference with the electric wires lines and apparatus of other parties and the currents therein as may be prescribed by the Board of Trade special regulations and in prescribing such means the Board shall have regard to the expense involved and to the effect thereof upon the commercial prospects of the undertaking ;
- (5.) At the expiration of two years from the commencement of this Order the provisions of this section shall not operate to give any right of action in respect of injurious interference with any electric wire line or apparatus or the currents therein unless in the construction erection maintaining and working of such wire line and apparatus all reasonable precautions including the use of an insulated return have been taken to prevent injurious interference therewith and with the currents therein by or from other electric currents ;
- (6.) If any difference arises between the *company* and any other party with respect to anything hereinbefore in this section contained that difference shall be referred to arbitration under this Order ;
- (7.) In this section the expression “the *company*” includes any

company or person owning working or running carriages over the railway (*h*).

59. Subject to the provisions of this Order—

The local authority of any district [*the road authority over any road*](*i*) in which any part of the railway is laid may make by-laws as to the following matters:—

Power of local [*road*] authority to make by-laws.

The rate of speed to be observed in travelling upon such part of the railway;

The distances at which carriages using such part of the railway shall be allowed to follow one after the other;

The stopping of carriages using such part of the railway;

The traffic on the road in which such part of the railway is laid;

For regulating the placing and fixing on the carriages of advertisement boards and placards and notices and the removal thereof if the same are unsafe unsightly or inconvenient;

For preventing overcrowding of the carriages;

The conditions under which heavy goods traffic may be loaded on and unloaded off the railway on any road on which such part of the tramway is laid;

For regulating the hours for the conduct of any traffic other than that of passengers and small parcels.

60. Within one month after the making of any by-law by a local [*road*] authority under this Order notice thereof and a copy of the by-law shall be published by the local [*road*] authority making the same once at least in each of two successive weeks in some one and the same local newspaper circulating in the area in which the part of the railway affected by such by-law is situate and a copy of every such by-law shall be sent to the Board of Trade and [*if made by any authority other than the corporation*] shall be delivered to the company.

General provisions as to by-laws.

No such by-law shall have any force or effect unless and until it has been allowed by the Board of Trade.

Any such by-law may impose reasonable penalties for offences against the same not exceeding forty shillings for each offence with or without further penalties for continuing offences not exceeding for any continuing offence ten shillings for every day during which the offence continues after conviction thereof but all such by-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid:

(*h*) Compare the model forms of regulations, *ante*, pp. 356 *sqq.*, and the authorities, *ante*, pp. 235 *sqq.* In proper cases a clause in the terms of sect. 24 (6a) of the model Provisional Order (*ante*, p. 435) as to interference with Government laboratories, &c. will be added.

(*i*) These words are usually substituted where the promoters are a local authority. As to the authorities which are given power to make by-laws, see note (*a*) to sect. 11 of the Act; and as to by-laws generally, see Tramways Act, 1870, ss. 46, 47, and notes thereto, and the model forms, *ante*, pp. 375, 377.

Provided that the provisions of this Order relating to the making of such by-laws with respect to the rate of speed to be observed in travelling on the railway shall not authorise the local [road] authority to make any by-law sanctioning a higher rate of speed than that authorised by the Board of Trade general regulations but the local [road] authority may if they think fit make by-laws under this Order for restricting the rate of speed to a lower rate than that so authorised (k).

For the protection of the Postmaster-General.

61. *As ante, p. 571. But at the end of sub-sect. (a) the following words are added:—*“and in case any such alteration be made a telegraphic line of the Postmaster-General shall not be altogether removed from any highway (including the unmetalled or waste land by the side of the highway) without his consent.”

RATES, &c. (l).

Rates authorised.

62. The *company* may demand and take in respect of the railway rates and charges not exceeding the sums hereinafter specified subject and according to the regulations in that behalf hereinafter contained (m).

Rates for passengers.

63. Subject to the provisions of this Order the *company* may demand and take for every passenger travelling upon the railway or any portion thereof including every expense incidental to the conveyance of such passenger any rates or charges not exceeding one penny per mile and in computing the said rates and charges a fraction of a mile shall be deemed a mile but the *company* may charge for any distance exceeding half-a-mile and not exceeding two miles any sum not exceeding twopence.

A list of all rates and charges authorised to be taken for passengers shall be exhibited in a conspicuous place inside each of the carriages used upon the railway (n).

As to fares on Sundays and holidays.

64. It shall not be lawful for the *company* or any company or person working or using the railway to take or demand on Sunday or any bank or other public holiday any higher rates or charges for passengers than those levied by them on ordinary week days.

Passengers' luggage.

65. Every passenger travelling upon the railway may take with him his personal luggage not exceeding twenty-eight pounds in weight without any charge being made for the carriage thereof but all such personal luggage must be carried by hand and at the responsibility of the passenger and must not be placed so as to occupy any part of a seat and must not be of a form or description to annoy or inconvenience other passengers.

(k) The words in brackets are used where the promoters are a local authority. See generally as to by-laws, sects. 46, 47 of the Tramways Act, 1870, and notes thereto, and model forms *ante*, pp. 375, 377.

(l) See sect. 11 (j) of the Act and note (h) thereto.

(m) See note (h) to sect. 11 of the Act, and Tramways Act, 1870, s. 45, and notes thereto.

66. The *company* may subject to the provisions of this Order demand and take for the use of the railway by any other company or person such reasonable tolls as they think fit. Tolls for use of railway.

67.—(1.) The *company* at all times after the opening of the railway for public traffic shall run a proper and sufficient service of carriages for artisans mechanics and daily labourers each way every morning and every evening (Sundays Christmas Day and Good Friday excepted) at such times not being later than eight in the morning or earlier than five in the evening respectively as may be most convenient for such workmen going to and returning from their work at fares not exceeding one halfpenny for every mile or fraction of that distance: Provided that on Saturdays the *company* instead of running such carriages after five in the evening shall run the same at such times between noon and two in the afternoon as may be most convenient for the said purposes. Cheap fares for labouring classes.

(2.) If complaint is made to the Board of Trade that such proper and sufficient service is not provided the Board after considering the circumstances of the locality may by order direct the *company* to provide such service as may appear to the Board to be reasonable.

(3.) The *company* shall be liable to a penalty not exceeding five pounds for every day during which they fail to comply with any order under this section (*n*).

68. The *company* may demand and take in respect of any goods animals or things conveyed by them on the railway including every expense incidental to the conveyance any rates or charges not exceeding those specified in the [*First*] Schedule to this Order according to the regulations contained therein. Rates for goods &c.

69. The rates and charges by this Order authorised shall be paid to such persons and at such places upon or near to the railway and in such manner and under such regulations as the *company* may by by-law under this Order appoint and all such rates and charges may be recovered as a civil debt in manner provided by the Summary Jurisdiction Acts (*o*). Payment of rates and charges.

70. If at any time after three years from the opening for public traffic of the railway or after three years from the date of any order made in pursuance of this section in respect of the railway or any portion thereof it is represented in writing to the Board of Trade by the local authority of any district in which the railway or such portion of the railway is wholly or partially situate or by twenty ratepayers of any such district or by the company [*or, by the local authority other than the corporation or by twenty ratepayers of any district in which any portion of the*

Periodical revision of rates and charges.

(*n*) Compare Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), s. 3, and see *ante*, p. 487.

(*o*) See Tramways Act, 1870, ss. 46, 47, 51, 52 and 56, and notes thereto.

railway is situate or by the corporation](*p*) that under the circumstances then existing all or any of the rates and charges on the railway should be revised the Board of Trade may (if they think fit) direct an inquiry to be held by a referee to be appointed by the said Board in accordance with the provisions of this Order. If such referee reports that it has been proved to his satisfaction that all or any of such rates and charges should be revised the said Board may make an order altering modifying reducing or increasing the same in such manner as they think fit and thenceforth such order shall be observed until the same is revoked or modified by an order of the Board of Trade made in pursuance of this section: Provided that the rates and charges prescribed by any such order shall not exceed in amount the rates and charges by this Order authorised.

CAPITAL (*q*).

71, 71a, 72—76. *As ante*, *p.* 575, sections 44, 44a, 45—47, 48, 49.

Company not to create debenture stock.

77. The company shall not create debenture stock in respect of any money authorised to be borrowed under this Order (*r*).

Mortgages to comprise purchase-money paid on sale to local authority.

78. Every mortgage of the undertaking shall be deemed to comprise all purchase-money which may be paid to the company in the event of a sale to a purchasing authority under the sections of this Order of which the marginal notes are respectively "Powers of local authority to purchase in event of cesser of powers of company" and "Future purchase of undertaking by local authorities" (*s*).

Endorsement of notice of future purchase by local authority.

79. Every mortgage deed granted by the company under this Order shall be endorsed with notice that such mortgage will not be a charge upon the railway or the undertaking in the event of their being purchased by a purchasing authority under the sections of this Order of which the marginal notes are respectively "Powers of local authority to purchase in event of cesser of powers of company" and "Future purchase of undertaking by local authorities" (*s*).

Application of moneys.

80. All moneys raised by the company under this Order whether by shares stock or borrowing shall be applied only for the purposes of this Order to which capital is properly applicable.

Interest on calls not to be paid out of capital.

81. No interest or dividend shall be paid out of any share or loan capital which the company are by this Order or any Act of Parliament authorised to raise to any shareholder on the amount of

(*p*) Substitute these words where a local authority are promoters. For the persons who are to make the representation, compare Tramways Act, 1870, s. 35.

(*q*) The following set of sections is inserted where required: see note (*e*) to sect. 11 of the Act.

(*r*) See notes to sect. 3 above, and note (*c*) to sect. 11 of the Act.

(*s*) See note to sect. 43 of Tramways Act, 1870, *ante*, *p.* 187.

the calls made in respect of the shares held by him but nothing in this Order shall prevent the company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation Act 1845 (*t*).

82. The company shall not out of any money by this Order authorised to be raised pay or deposit any sum which by any Standing Order of either House of Parliament or by any rule of the Board of Trade now or hereafter in force may be required to be deposited in respect of any application to Parliament or to the Light Railway Commissioners for the purpose of obtaining an Act or Order authorising the company to construct any other railway or to execute any work or undertaking.

Deposits not to be paid for out of capital.

DISCONTINUANCE OF RAILWAY (*u*).

83.—(1.) If at any time it is proved to the satisfaction of the Board of Trade that the working of the whole or any part of the railway has been discontinued for three months (such discontinuance not being occasioned by circumstances beyond the control of the company for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control) the said Board if they think fit may by order declare that the powers of the company in respect of the whole or such part of the railway shall from the date named in such order cease and the said powers shall accordingly cease except in so far as the same may be transferred to any authority purchasing any part of the undertaking under the powers hereinafter contained.

Railway to be removed in certain cases.

(2.) Where under any such order the said powers have ceased and determined the road authority of any district in which the railway or part of the railway in the said order mentioned is wholly or partially situate may with the sanction of the Board of Trade remove the railway or such part thereof and the company shall pay to the road authority the expenses of such removal and of the making good of the road by the road authority as certified by the clerk or surveyor of the road authority.

[Or, (1.) *If at any time it is proved to the satisfaction of the Board of Trade that the working of the whole or any part of the railway has been discontinued for three months (such discontinuance not being occasioned by circumstances beyond the control of the corporation) the said Board if they think fit may by order declare that the powers of the corporation in respect of the whole or such part of the railway shall from the date named in such order cease and the said powers shall accordingly cease except so far as the powers in respect of the part of*

(*t*) Sometimes, however, a clause in the form of sect. 52, *ante*, p. 577, is substituted.

(*u*) See Tramways Act, 1870, s. 41, and notes thereto.

the railway outside the borough may be transferred to the local authority under the powers hereinafter contained.

(2.) *Where under any such order as aforesaid or under any provision of this Order the powers of the corporation under this Order as regards the railway or any part thereof have ceased the road authority over any road of which the corporation are not the road authority and in which the railway or part of the railway in such order mentioned or as regards which the powers of the corporation have ceased is laid may with the sanction of the Board of Trade remove the railway or such part thereof and the corporation shall pay to such road authority the expenses of such removal and of the making good of the road by the road authority as certified by the clerk or surveyor of the road authority.]*

(3.) If the company fail to pay the amount so certified within one month after delivery to them of such certificate or a copy thereof the road authority may without any previous notice to the company (but without prejudice to any other remedy which they may have for the recovery of the amount) sell and dispose of the materials removed in such manner as the road authority may think fit and may out of the proceeds of such sale pay and reimburse themselves the amount of the expenses certified as aforesaid and of the costs of sale and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the company.

INSOLVENCY OF COMPANY (x).

Proceedings
in case of
insolvency
of company.

84. If at any time after the opening for public traffic of the railway or any part thereof it appears to the road authority over any road upon which the railway is laid that the company are insolvent so that they are unable to maintain the same or work the same with advantage to the public and such authority makes a representation to that effect to the Board of Trade the Board of Trade may direct an inquiry to be held by a referee appointed by the said Board in accordance with the provisions of this Order. If such referee reports that it has been proved to his satisfaction that the company are so insolvent as aforesaid the Board of Trade may by order declare that the powers of the company shall from the date named in the order cease and the said powers shall accordingly cease except so far as the same may be transferred to any local authority purchasing the undertaking or any part thereof under the powers hereinafter contained.

Where under any such order the said powers have ceased such road authority may remove the railway or part of the railway upon such road in like manner and subject to the same provisions as to the payment of the expenses of such removal and to the same

(x) Only inserted, of course, where a company is promoting, whether formed by the Order or not.

remedy for recovery of such expenses in every respect as in cases of removal under the last preceding section (y).

PURCHASE AND SALE OF RAILWAY (z).

[84a. For the purposes of this Order the purchasing authorities are as respects the part of the undertaking within the borough of the corporation as respects the part of the undertaking within the borough of the mayor aldermen and burgesses of the borough of (hereinafter called "the Corporation") and as respects the part of the undertaking within the rural district of the county council] (a).

Purchasing authorities.

85. Where an order has been made by the Board of Trade for the cesser of the powers of the company either in the case of discontinuance or of insolvency as aforesaid or where the powers of the company under this Order as regards the railway or any part thereof have ceased the local authority of any district in which the railway or part thereof named in such order or as regards which the powers aforesaid have ceased is wholly or partially situate may at any time before a date to be fixed in each case by the Board of Trade by special resolution decide to purchase the part of the undertaking which is situate in their district and as regards which the powers of the company have ceased and if they so decide they shall be entitled to purchase the same on terms of paying a sum equal to the then value such value to be determined on the basis and in the manner prescribed for the purchase of a tramway by a local authority under sect. 43 of the Tramways Act, 1870.

Power of local authority to purchase in event of cesser of powers of company.

[Or, Where an order has been made by the Board of Trade for the cesser of the powers of the Corporation as regards any part of the railway outside the borough in the case of discontinuance as aforesaid or where the powers of the corporation under this Order as regards any such part have ceased the local authority of any district in which such part of the railway is situate may at any time before a date to be fixed in each case by the Board of Trade by special resolution decide to purchase the said part of the railway and if they so decide they shall be entitled to purchase the same on terms of paying a sum equal to the then value such value to be determined on the basis and in the manner prescribed for the purchase of a tramway by a local authority under sect. 43 of the Tramways Act, 1870 (b).]

(y) See Tramways Act, 1870, s. 42, and notes thereto.

(z) See, generally, note (k) to sect. 11 of the Act, and Tramways Act, 1870, s. 43, and notes thereto.

(a) This section will be inserted where the general words of sects. 85 and 86 do not carry out the proposed arrangement, and the following sections must be slightly altered accordingly. See note (k) to sect. 11 of the Act.

(b) See sect. 43 of Tramways Act, 1870, and notes thereto. As to special resolutions, see sect. 2 of this Order and note (d) thereto.

Future purchase of [*part of*] undertaking by local authorities [*authority*].

86.—(1.) If within six months after the expiration of a period of years from the commencement of this Order or within six months after the expiration of every subsequent period of *seven* years each of the local authorities [*the local authority*] in whose district[s] the railway [*the part of the railway outside the borough*] is situate serve notice on the *company* requiring the *company* to sell to them the part of the undertaking within their district in accordance with the provisions of this section then the *company* shall sell to each [*such*] authority the part within their district.

(2.) The price to be paid to the *company* by all the local authorities [*the local authority*] for the whole undertaking [*part purchased*] shall be an amount equal to the fair market value of the undertaking [*thereof*] as a going concern but without any allowance for compulsory purchase and in case of difference between the *company* and the local authorities [*authority*] as to the total amount to be so paid the difference shall be determined by arbitration under this Order.

(3.) The proportion of the total price to be paid by each local authority shall be determined in default of agreement between the local authorities by arbitration under this Order.

(4.) A notice to purchase under this section given by a local authority shall not be of any effect unless it is given in pursuance of a special resolution of the authority.

[5.] *A local authority shall not purchase under this section any portion of the railway outside their district (in this section referred to as the outside portion of the railway) unless the purchase of that portion is approved by the Board of Trade.*

(6.) *Before approving the purchase the Board of Trade shall—*

(a) *be satisfied that the purchase of the outside portion of the railway by the local authority and if the authority intend to work that portion of the railway the working of that portion of the railway by them is expedient in the interests of their district; and*

(b) *fix a limit of expenditure both with regard to the amount of the purchase-money and the amount (if any) to be expended on the working of the outside portion of the railway the limit so fixed not to exceed in either case such amount as will in the opinion of the Board bear due proportion to the benefit which may be expected to accrue to the district of the local authority from the purchase or working as the case may be of the outside portion of the railway.*

The expenditure of the local authority in purchasing or working the outside portion of the railway shall not exceed in either case the limit so fixed by the Board of Trade (c).]

(c) The words in brackets in sub-sects. 1 and 2 will be used where the section is dealing with the sale by a local authority of a part of the railway outside its

87. The *company* may at any time with the consent of the Board of Trade sell the undertaking or any part thereof to any company or person or may with the like consent sell so much of the same as is within the district of any purchasing authority to such authority [*as is outside the borough to the local authority*] and such authority may make such purchase if they shall have decided by special resolution to do so (*d*). Power of sale.

88. Where any purchase is made by any local authority under the provisions of this Order the following provisions shall have effect:— Provisions affecting purchase by local authorities.

(1.) Such arrangements as may be approved by the Board of Trade shall be made for vesting in each local authority the part of the undertaking purchased and for a scheme or schemes for the future maintenance management and working of the railway [*and the corporation and such local authority shall work the same in conformity therewith*] and the sale shall not take effect until an instrument has been properly executed in a form approved by the Board of Trade for carrying into effect such arrangements.

(2.) The local authorities may pay the purchase-money and all expenses incurred by them in relation to such purchase under the authority of this Order in the case of a corporation or of an urban district council out of the like rate and with the like powers to borrow on the security of the same as if such expenses were incurred in applying for obtaining and carrying into effect a Provisional Order obtained by them under the Tramways Act 1870 and in the case of a rural district council as if such expenses were general expenses incurred in the execution of the Public Health Act 1875 (*e*).

[88a. *Where an order has been made by the Board of Trade for the cesser of the powers of the council in the case of discontinuance as aforesaid or where the powers of the council under this Order as regards any part of the railway have ceased the county council may at any time before a date to be fixed in each case by the Board of Trade by special resolution decide to purchase the undertaking or part thereof in respect of which the powers have ceased and if they so decide they shall be entitled to purchase the same on terms of paying a sum equal to the then value such value to be determined on the basis and in the* Power of County Council to purchase undertaking in event of cesser of powers of council.

own district to another local authority. In such a case sub-sect. 3 must be omitted. See, as to the time of purchase, &c., note (*k*) to sect. 11 of the Act, and Tramways Act, 1870, s. 43, and notes thereto. As to special resolutions, see sect. 2 of this Order and note (*d*) thereto.

(*d*) As to the words in brackets, see note to sect. 86. See, generally, Tramways Act, 1870, s. 44, and notes thereto.

(*e*) For a county council's expenses, see sect. 88c below. As to the words in brackets, see note to sect. 85. As to the payment of the expenses of a Provisional Order, see Tramways Act, 1870, s. 20, and notes thereto, and compare also sects. 43 and 44.

manner prescribed for the purchase of a tramway by a local authority under section 43 of the Tramways Act 1870.

Power of sale. **88b.** *The council may at any time with the consent of the Board of Trade sell the undertaking or any part thereof to any company or person or may with the like consent sell the same to the county council if the county council shall have decided by special resolution to make such purchase.*

Provisions affecting purchase by county council. **88c.** *Where any purchase is made by the county council under the provisions of this Order the following provisions shall have effect:—*

- (1) *Such arrangements as may be approved by the Board of Trade shall be made for vesting in the county council the undertaking or the part thereof purchased and for a scheme or schemes for the future maintenance management and working of the railway and the county council shall work the same in conformity therewith and the sale shall not take effect until an instrument has been properly executed in a form approved by the Board of Trade for carrying into effect such arrangements.*
- (2) *The county council may pay the purchase-money and all expenses incurred by them in relation to such purchase under the authority of this Order as general expenses out of the county fund and such council shall have the like power to borrow for the purpose as if it were one of the purposes specified in section 69 of the Local Government Act 1888 (f).]*

Effect of sale of undertaking.

89.—(1.) *When the undertaking or part of the undertaking has been sold under this Order all the rights powers and authorities and obligations of the company in respect of the undertaking or part of the undertaking sold shall (subject to the provisions of this Order and of any such scheme as aforesaid and if and so far as the undertaking is not leased to the company) be transferred to vested in and may be exercised by and shall attach to the respective authorities companies or persons to whom the same has been sold and in reference to the same they shall be deemed to be the company.*

[(2.) In the event of a sale under this Order by the corporation of any part of the railway either within the district of which they are the local authority or upon any road of which they are the road authority the same rights powers and authorities as are under this Order given to any local or road authority other than the corporation with respect to the railway either within the district of or upon roads under the control of such respective authority shall thereupon attach to and become vested in the corporation in respect of the part of the railway sold as aforesaid as if the said rights powers and authorities had been expressly given to the corporation by this Order in the same way as to any local or road authority other than the corporation and subject to the same terms and conditions and the provisions of this

(f) These last three sections will be used in lieu of 84a—88, where, as is not seldom the case, power is given to a county council to purchase the undertaking of a district council within its county. As to special resolutions, see sect. 2 of this Order and note (d) thereto.

Order relating to such rights powers and authorities shall apply and have effect as between the company or person purchasing the part of the railway sold as aforesaid and the corporation in the same way as they apply under this Order between the corporation and any local or road authority other than the corporation] (g).

LEASE OF RAILWAY BY LOCAL AUTHORITY.

90.—(1.) Where any local authority has under the powers of this Order acquired any part of the undertaking within their district such authority may lease the same [*When the railway has in accordance with this Order been completed the corporation or any authority having under this Order acquired any part of the undertaking may lease the undertaking or the part thereof respectively belonging to the corporation or to such local authority as the case may be*] to any corporation company or person in accordance with the provisions of sects. 112 and 113 of the Railways Clauses Consolidation Act 1845.

Power to local authority to lease railway.

(2.) Every such lease shall imply a condition of re-entry if the lessees discontinue the working of the railway leased or any part thereof for the space of three months (such discontinuance not being occasioned by circumstances beyond the reasonable control of the lessees for which purpose the want of sufficient funds shall not be considered a circumstance beyond their reasonable control) (h).

[*Deposit of Money &c.*]

[90a—d. *As ante, p. 581. The deposit sections are only inserted if the penalty sections (ante, sects. 44, 45, and p. 565) are not. See sect. 11 (k) of the Act and note (i) thereto.*]

[*Financial Provisions*] (i).

[90e.—(1.) *The corporation may borrow for the purposes of this Order of which the expense is properly chargeable to capital such sum as may be required not exceeding* pounds.

Power to borrow.

(2.) *The said powers of borrowing money shall be in addition to and independent of any other borrowing power of the corporation and shall not be restricted by any of the regulations contained in section 234 of the Public Health Act 1875 (k) and in calculating the amount which*

(g) This sub-section will be inserted where a local authority sells to a company or person under sect. 87. See, generally, sect. 43 of Tramways Act, 1870, and notes thereto.

(h) See note (k) to sect. 11 of the Act, and Tramways Act, 1870, s. 19, and notes thereto.

(i) These, of course, are only inserted where a local authority are promoters. See, generally, sects. 11 (g) and 16 of the Act and notes thereto.

(k) 38 & 39 Vict. c. 55. The section limits the amount to be borrowed, the time of repayment, &c.

the corporation may borrow under that Act any sums which they may borrow under this Order shall not be reckoned.

(3.) *In order to secure the repayment of the moneys so to be borrowed and the payment of the interest thereon the corporation may mortgage or charge the revenue of the undertaking and in addition thereto and as a collateral security they may mortgage or charge their borough fund and borough rate.*

[Or, (1.) *The council may in addition to and independently of any other borrowing power borrow for the purposes of this Order of which the expense is properly chargeable to capital and for paying the cost of obtaining this Order such sums as may be required not exceeding in the whole* pounds.

(2.) *In order to secure the repayment of the moneys borrowed under this section and the payment of the interest thereon the council may mortgage or charge the revenue of the undertaking and in addition thereto and as a collateral security they may mortgage or charge the common fund out of which the general expenses of the council under the Public Health Acts are payable]* (kk).

Mode of raising money.

90f. *The corporation may raise all or any moneys which they are authorised to borrow under this Order by mortgage or by the issue of debentures or annuity certificates under and subject to the provisions of the Local Loans Act 1875 (l) or partly in one way and partly in another : Provided that if the corporation borrow under the Local Loans Act 1875 (l) the provisions of this Order relating to the sinking fund shall apply in the place of those of section 15 of that Act.*

Certain regulations of Public Health Act as to borrowing not to apply.

[90g. *The powers of borrowing money by this Order given shall not be restricted by any of the regulations contained in section 234 of the Public Health Act 1875 and in calculating the amount which the council may borrow under that Act any sums which they may borrow under this Order shall not be reckoned]* (m).

Provisions of Public Health Act as to mortgages to apply.

90h. *The following sections of the Public Health Act 1875 shall extend and apply to mortgages granted under this Order (that is to say)—*

Section 236. Form of mortgage ;

Section 237. Register of mortgages ;

Section 238. Transfer of mortgages ;

Section 239. Receiver may be appointed in certain cases.

Period for repayment of money borrowed.

90i. *The corporation shall pay off all moneys borrowed by them under the powers of this Order within forty (n) years from the date or dates of the borrowing of the same and the said period is referred to in this Order as "the prescribed period."*

(kk) This alternative form will be used where a council are promoters.

(l) 38 & 39 Viet. c. 83.

(m) To be inserted only in the case of a district council.

(n) See note (x) to sect. 16 of the Act.

90j. *The corporation shall pay off all moneys borrowed by them under the powers of this Order either by equal yearly or half-yearly instalments of principal or of principal and interest or by means of a sinking fund formed and maintained in accordance with the provisions of the Second Schedule to this Order or partly by such instalments and partly by such sinking fund and the payment of the first instalment or the first payment to such sinking fund shall be made within twelve months if by yearly repayments or within six months if by half-yearly repayments from the time of borrowing the sum in respect of which the payment is made. The provisions of paragraph 3 of the Second Schedule with respect to instalments shall apply to instalments under this section as well as to sums required to be paid to a sinking fund.*

*Mode of
repayment of
money
borrowed.*

90k. *If the corporation pay off any moneys borrowed by them under this Order otherwise than by instalments appropriations or annual repayments or by means of a sinking fund or out of the proceeds of the sale of land or other property or out of other moneys received on capital account not being borrowed moneys they may re-borrow the same but all moneys so re-borrowed shall be re-paid within the prescribed period and shall be deemed to form the same loan as the moneys originally borrowed and the obligations of the corporation with respect to the repayment of the loan and to the provision to be made for such repayment shall not be affected by reason of such borrowing.*

*Power to
re-borrow.*

90l. *Any person lending money to the corporation under this Order shall not be bound to inquire as to the observance by them of any provisions of this Order or be bound to see to the application or be answerable for any loss or non-application of the money lent or of any part thereof.*

*Protection of
lender from
inquiry.*

90m. *Moneys borrowed or raised by the corporation under this Order shall be applied only to the several purposes in respect of which they were respectively authorised to be borrowed or raised and to which capital is properly applicable.*

*Application
of money
borrowed.*

90n. *Nothing in this Order shall prejudicially affect any charge on the revenue and rates or the estates and property of the corporation subsisting at the commencement of this Order and every mortgagee or person for the time being entitled to the benefit of any such charge shall have the same priority of charge and all the like rights and remedies in respect of the revenue rate and property subject to his charge as if this Order had not been confirmed and all such charges created before the commencement of this Order shall during the subsistence thereof have priority over any mortgage or charge granted under this Order on the same revenue rate and property.*

*Saving for
existing
charges.*

90o. *The expenditure of the corporation on that part of the railways authorised by this Order which is outside the borough of [their district] (o) shall not exceed the sum of pounds.*

*Expenditure
on part of
railways out-
side borough
[district] (o).
Separate*

90p. *Separate accounts shall be kept of all receipts and expenditure*

*accounts and
audit.*

of the corporation in respect of the undertaking and those accounts shall be audited examined and published in like manner and with the like incidents and consequences as the accounts of the corporation are audited examined and published under the Municipal Corporations Act 1882 (p).

Application of Moneys Received.

*Application
of revenue.*

90q. *All moneys received by the corporation in respect of the undertaking except (a) borrowed money (b) money arising from the disposal of lands acquired for the purposes of this Order and (c) any other money of the nature of capital money received by them in respect of any sale under the provisions of this Order shall be applied in payment of the working and establishment expenses and cost of maintenance of the undertaking including all costs expenses penalties and damages incurred or payable by the corporation consequent upon any proceedings by or against the corporation their officers or servants in relation to the undertaking and after such payment shall be applied by the corporation as follows:—*

- (1.) *In payment of the interest or dividend on any mortgages or other securities granted and issued by the corporation in respect of money borrowed for the purposes of this Order.*
- (2.) *In payment of any sums required to be paid for any instalments appropriations or annual repayments or sinking fund in respect of moneys borrowed for the purposes of this Order.*
- (3.) *In payment by the corporation of any other their expenses properly incurred by them in the execution of this Order.*
- (4.) *In providing (if the corporation think fit) a reserve fund by setting aside such money as they think reasonable and investing the same and the income thereof in securities in which they are by this Order authorised to invest sinking funds until the fund so formed amounts to a sum of two thousand pounds which fund shall be applicable to answer any deficiency at any time happening in the income of the corporation from the undertaking or to meet any extraordinary claim demand or liability at any time arising against or upon the corporation in respect thereof and so that if that fund is at any time reduced it may thereafter be again restored to the said sum and so from time to time as often as such reduction happens.*

Any deficiency of income from the undertaking to meet the expenses thereof in any year shall be payable out of the borough fund by an increase of the first borough rate made after the deficit is ascertained [out of the common fund out of which the general expenses of the council under the Public Health Acts are payable](q) and any

(p) See sects. 25 to 28. In the case of a district council substitute "the Local Government Act, 1894," for the Scots equivalent of which see sect. 26 (8) of the Act.

(q) The words in brackets are to be used in the case of a council.

surplus income from the undertaking in any year and the income of the reserve fund so long as that fund amounts to two thousand pounds shall be carried to the credit of the borough [said common] (q) fund.

90r. *All moneys arising from the disposal of lands acquired by the corporation for the purposes of this Order and all moneys not of the nature of rent received by them in respect of any sale of the undertaking under the provisions of this Order and all other capital moneys received by them in respect of the undertaking shall be applied by them so long as any capital moneys borrowed by them for the purposes of this Order shall not have been repaid in the repayment of such moneys but shall not be applied in the payment of instalments or to payments into the sinking fund except to such extent and upon such terms as may be approved by the Local Government Board and thereafter shall be applied as capital subject to the approval of that Board.]*

Application of capital moneys.

MISCELLANEOUS.

91. The *company* shall transmit to the Board of Trade such returns and accounts as that Board may require.

Returns and accounts.

92. The *company* shall be answerable for all accidents damages and injuries happening through their act or default or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages and shall save harmless all road and other authorities companies or bodies collectively and individually and their officers and servants from all damages and costs in respect of such accidents damages and injuries (r).

Company to be responsible for all damages.

93. With respect to notices and to the delivery thereof by or to the *company* the following provisions shall have effect (that is to say) :—

For n and delivery of notices.

(1.) Every notice shall be in writing and if given by the *company* or by any local authority or any road authority shall be signed by their [secretary or] (s) clerk ;

(2.) Any notice to be delivered by or to the *company* to or by any local authority or any road authority or other body or any company may be delivered by being left at the principal office of the *company* or of that authority body or company as the case may be or by being sent by post in a prepaid letter addressed to their respective secretary or clerk at their principal office.

94. All orders and regulations made by the Board of Trade under the authority of this Order shall be signed by a secretary or an assistant-secretary of the Board.

Orders &c. of the Board of Trade.

(r) See Tramways Act, 1870, s. 55, and notes thereto.

(s) Omit these words where a local authority are promoters.

Provision as
to general
Acts relating
to light
railways.

95. Nothing in this Order contained shall exempt the *company* or the railway from the provisions of any general Act of Parliament which may hereafter pass affecting light railways authorised before the passing of that general Act or from the provisions of any general Act relating to the better and more impartial audit of the accounts of railway companies now in force or which may hereafter pass or from any future revision or alteration under the authority of Parliament of the maximum rates of fares and charges or of the rates for small parcels authorised to be taken by the *company*.

Arbitration.

96.—(1.) Where any difference is to be referred to or determined by arbitration under this Order that difference shall be referred to the Board of Trade or if the Board of Trade think fit to an engineer or other fit person appointed as arbitrator by the Board.

(2.) The Board of Trade Arbitrations &c. Act 1874 shall apply with reference to the determination by the Board of any such difference or of any other matter under this Order and to the appointment of an arbitrator as if this Order were a special Act within the meaning of sect. 4 of that Act (*t*).

(3.) The Arbitration Act 1889 (*u*) shall apply for the purpose of the determination of any difference under this Order by an arbitrator appointed by the Board of Trade as if the arbitration were pursuant to a submission.

Regulating
certain
inquiries
before referee
appointed by
the Board of
Trade.

97. Every inquiry which by the sections of this Order whereof the respective marginal notes are “Periodical revision of rates and charges” and “Proceedings in case of insolvency of company” (*x*) the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions:—

- (1.) The inquiry shall be held in public before an officer to be appointed in that behalf by the Board (hereinafter called “the referee”) and whose appointment shall be by writing which shall specify all the matters referred to him;
- (2.) Ten days’ notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry of the time and place at which the inquiry is to be commenced;
- (3.) The inquiry shall be commenced at the time and place so appointed and the referee may adjourn the inquiry as may be necessary to such time and place as he may think fit;

(*t*) The Act is 37 & 38 Vict. c. 40. As to its provisions see note (*d*) to sect. 63 of Tramways Act, 1870.

(*u*) 52 & 53 Vict. c. 49.

(*x*) Omit “and . . . company” where a local authority are promoters. The two sections referred to are sects. 70 and 84. As to this section generally, see notes to sect. 63 of Tramways Act, 1870.

- (4.) The referee by summons shall on the application of any party interested in the inquiry require the attendance before himself at a place and time to be mentioned in the summons of any person to be examined as a witness before him and every person summoned shall attend the referee and answer all questions touching the matter to be inquired into and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds: Provided that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode;
- (5.) The referee may and shall administer an oath or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice to any person tendered or summoned as a witness on the inquiry;
- (6.) Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury;
- (7.) The referee shall make his report to the Board of Trade in writing and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

98, 99. *As ante*, p. 583.

Penalties.
Costs of
Order.

[FIRST] SCHEDULE.

MAXIMUM RATES AND CHARGES FOR GOODS MATERIALS ARTICLES AND THINGS CONVEYED BY THE *COMPANY* ON THE RAILWAY.

Animals.

- For every horse mule or other beast of draught or burden fourpence per head per mile;
- For every ox cow bull or head of cattle threepence per head per mile;
- For calves pigs sheep and small animals one penny halfpenny per head per mile.

Goods.

- For all coals coke culm charcoal cannel limestone chalk lime salt sand fireclay cinders dung compost and all sorts of

MODEL LIGHT RAILWAY ORDER (CLASS B.).

- manure and all undressed materials for the repair of public roads or highways twopence per ton per mile;
- For all iron ironstone iron ore pig iron bar iron rod iron sheet iron hoop iron plates of iron slabs billets and rolled iron bricks slag and stone stones for building pitching and paving tiles slates and clay (except fireclay) and for wrought iron not otherwise specially classed herein and for heavy iron castings including railway chairs twopence halfpenny per ton per mile;
- For all sugar grain corn flour hides dye woods earthenware timber staves deals and metals (except iron) nails anvils vices and chains and for light iron castings threepence per ton per mile;
- For cotton wools drugs manufactured goods and all other wares merchandise fish articles matters or things not otherwise specially classed herein fourpence per ton per mile;
- For every carriage of whatever description [*other than a bicycle or tricycle*] one shilling per mile;
 [*For every bicycle or tricycle* *per mile.*]

Small Parcels.

- For any parcel not exceeding seven pounds in weight twopence;
- For any parcel exceeding seven pounds and not exceeding fourteen pounds in weight fourpence;
- For any parcel exceeding fourteen pounds and not exceeding twenty-eight pounds in weight sixpence;
- For any parcel exceeding twenty-eight pounds and not exceeding fifty-six pounds in weight ninepence;
- For any parcel exceeding fifty-six pounds but not exceeding five hundred pounds in weight such sum as the *company* may think fit;
- Provided always that articles sent in large aggregate quantities although made up in separate parcels such as bags of sugar coffee meal and the like shall not be deemed small parcels but that term shall apply only to single parcels in separate packages.

Single Articles of Great Weight.

The *company* shall not be bound to carry single articles of great weight but if they do carry such articles they may charge:—

- For the carriage of any iron boiler cylinder or single piece of machinery or single piece of timber or stone or other single article the weight of which including the carriage shall exceed four tons but shall not exceed eight tons such sum as the *company* may think fit not exceeding two shillings per ton per mile;
- For the carriage of any single piece of timber stone machinery or other single article the weight of which with the carriage shall exceed eight tons such sum as the *company* may think fit.

Regulations as to Rates.

- For animals goods or things conveyed on the railway for any less distance than two miles the *company* may demand rates and charges as for two miles ;
- In computing the said rates and charges a fraction of a mile shall be deemed a mile ;
- For the fraction of a ton the *company* may demand rates according to the number of quarters of a ton in such fraction and if there be a fraction of a quarter of a ton such fraction shall be deemed a quarter of a ton ;
- With respect to all articles except stone and timber the weight shall be determined according to the imperial avoirdupois weight ;
- With respect to stone and timber fourteen cubic feet of stone forty cubic feet of oak mahogany teak beech or ash and fifty cubic feet of any other timber shall be deemed one ton weight and so in proportion for any smaller quantity ;
- In the case of goods and single articles of great weight the *company* may demand such charges as are reasonable for loading and unloading the same and if any difference shall arise as to the reasonableness of any such charge the matter in difference shall be settled by the Board of Trade.

[SECOND SCHEDULE.]

[This Schedule is to be added only where a local authority are promoters. See sect. 90j of this Order.]

Provisions as to Sinking Fund, &c.

- 1.—(i.) *The sinking fund shall be formed and maintained either—*
 - (a) *By payment to the fund throughout the prescribed period of such equal annual sums as will together amount to the moneys for the repayment of which the sinking fund is formed (a sinking fund so formed is in this Schedule called a “non-accumulating sinking fund”); or*
 - (b) *By payment to the fund throughout the prescribed period of such equal annual sums as with accumulations at a rate not exceeding three pounds per centum per annum will be sufficient to pay off within the prescribed period the moneys for the repayment of which such sinking fund is formed (a sinking fund so formed is in this Schedule called an “accumulating sinking fund”).*
- (ii.) *Every sum paid to a sinking fund and in the case of an accumulating sinking fund the interest on the investment of the sinking fund shall unless applied in repayment of the loan in respect of which the sinking fund is formed be immediately invested in securities in which trustees are by law for the time being authorised to invest or in mortgages bonds debenture stock stock or other securities (not being annuity certificates or securities payable to bearer) duly issued by any local authority as defined by section 34 of the Local Loans Act 1875 other than the corporation the corporation being at liberty to vary and transpose such investments.*
- (iii.) *In the case of a non-accumulating sinking fund the interest on the investments of the fund may be applied by the corporation toward the equal annual payments to the fund.*
- (iv.) *The corporation may at any time apply the whole or any part of any*

sinking fund in or towards the discharge of the money for the repayment of which the fund is formed: Provided that in the case of an accumulating sinking fund the corporation shall pay into the fund each year and accumulate during the residue of the prescribed period a sum equal to the interest which would have been produced by such sinking fund or part of a sinking fund so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

(v.)—(a) *If and so often as the income of an accumulating sinking fund is not equal to the income which would be derived from the amount invested if that amount were invested at the rate per centum per annum on which the equal annual payments to the fund are based any deficiency shall be made good by the corporation.*

(b) *If and so often as the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if that amount were invested at the rate per centum per annum on which equal annual payments to the fund are based any such excess may be applied towards such equal annual payments.*

(vi.) *Any expenses connected with the formation maintenance investment application management or otherwise of the sinking fund shall be paid by the corporation in addition to the payments provided for by this Schedule.*

2.—(i.) *If it appears to the corporation at any time that the amount in the sinking fund with the future payments thereto in accordance with the provisions of this Schedule together with the accumulations thereon (in the case of an accumulating sinking fund) will probably not be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed it shall be the duty of the corporation to make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose: Provided that if it appears to the Local Government Board that any such increase is necessary the corporation shall increase the payments to such extent as the Board may direct.*

(ii.) *If the corporation desire to accelerate the repayment of the loan they may increase the amounts payable to any sinking fund.*

(iii.) *If the amount in any sinking fund with the future payments thereto in accordance with the provisions of this Schedule together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Local Government Board be more than sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the corporation may reduce the payments to be made to the sinking fund either temporarily or permanently to such an extent as that Board shall approve.*

(iv.) *If the amount in any sinking fund at any time together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Local Government Board be sufficient to repay the loan in respect of which it is formed within the prescribed period the corporation may with the consent of that Board discontinue the equal annual payments to such sinking fund until the Board shall otherwise direct.*

(v.) *Any surplus of any sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it is formed shall be applied to such purpose or purposes as the corporation with the consent of the Local Government Board may determine.*

3.—(i.) *The town clerk of the borough [clerk of the council] shall within twenty-one days after the thirty-first day of March in each year if during the twelve months next preceding the said thirty-first day of March any sum is required to be paid as an instalment or to a sinking fund in pursuance of the provisions of this Order and at any other time when the Local Government Board may require such a return to be made transmit to the Local Government Board a return in such form as may be prescribed by the Board*

and if required by that Board verified by statutory declaration of the said town clerk [clerk] showing for the year next preceding the making of such return or for such other period as the Board may prescribe the amounts which have been paid as instalments or paid to or invested or applied for the purpose of the sinking fund and the description of the securities upon which any investment has been made and the purposes to which any portion of the sinking fund or investment or of the sums accumulated by way of compound interest has been applied during the same period and the total amount (if any) remaining invested at the end of the year and in the event of his wilfully failing to make such return the said town clerk [clerk] shall for each offence be liable to a penalty not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court and notwithstanding the recovery of such penalty the making of the return shall be enforceable by writ of mandamus to be obtained by the Local Government Board out of the High Court.

(ii.) If it appears to the Local Government Board by that return or otherwise that the corporation have failed to pay any instalment required to be paid or to pay or set apart any sum required for the sinking fund or have applied any portion of the sinking fund to any purpose other than those authorised the Local Government Board may by order direct that the sum in such order mentioned not exceeding double the amount in respect of which default has been made shall be paid or applied as in such order mentioned and any such order shall be enforceable by writ of mandamus to be obtained by the Local Government Board out of the High Court.]

[For form of confirmation by Board of Trade, see *ante*, p. 585.]

PRECEDENT OF A LIGHT RAILWAY ORDER AUTHORISING EXTENSIONS.

(See sect. 24 of the Act and notes thereto.)

THE LIGHT RAILWAYS ACT, 1896. —— LIGHT RAILWAY (EXTENSIONS) ORDER 19 .

ORDER AUTHORISING THE CONSTRUCTION OF LIGHT RAILWAYS
IN THE ——— OF ——— IN EXTENSION OF THE LIGHT
RAILWAY AUTHORISED BY THE ——— LIGHT RAILWAY
ORDER 19 .

Preamble. WHEREAS by the Light Railway Order 19 (hereinafter referred to as “the principal Order”) the *Light Railway Company* were incorporated and authorised to construct a Light Railway in the County of from to And whereas an application was in 19 duly made to the Light Railway Commissioners by the said *company* in pursuance of the Light Railways Act 1896 for an Order to authorise the construction of the light railways hereinafter described And whereas it is intended that the light railways to be authorised by this Order shall form extensions of and shall be worked in connection with the railway authorised by the principal Order Now we the Light Railway Commissioners being satisfied after local inquiry of the expediency of granting the said application do in pursuance of the said Act and by virtue and in exercise of the powers thereby vested in and of any other power enabling us in this behalf ORDER as follows:—

Short title.
Interpreta-
tion.
Power to
make
railways.

1. *As ante*, p. 550.
 2. *As ante*, pp. 550, 586.
 3. *As ante*, pp. 553, 588.
- [Here add clauses conferring compulsory powers and protective clauses, if required.]

4. Except as otherwise expressly provided the provisions of the principal Order and of the Schedule thereto and of the enactments incorporated therewith shall so far as they are applicable apply to the railway as if it had been part of the railway authorised by the principal Order and to the *company*. Railway to be part of railway authorised by the principal Order.

5. Section of the principal Order is hereby amended and Capital. shall be read as follows :—

“ The capital of the company shall be pounds in shares of pounds each.”

6. Section of the principal Order is hereby amended and shall be read as if it had provided that the company may subject to the provisions of this Order borrow on mortgage of the undertaking and the undertaking by the principal Order authorised any sum or sums not exceeding in the whole pounds and of that sum they may borrow pounds in respect of each pounds of their capital of pounds. Power to borrow.

7. All moneys raised by the company under the principal Order as amended by this Order whether by shares stock or borrowing shall be applied only for the purposes of the principal Order and of this Order to which capital is properly applicable. Application of moneys.

8. The company shall not exercise the powers by this Order conferred upon them unless and until they shall have paid as a deposit the sum of pounds to the account of the Paymaster-General for and on behalf of the Supreme Court of Judicature to the credit of the railways and the provisions of the Order of 19 which apply to the deposit required to be made by the company under that Order shall apply *mutatis mutandis* to the deposit required under this section. Deposit to be made by company before exercising powers.

9. *As ante*, p. 583.

Costs of Order.

PRECEDENT OF A LIGHT RAILWAY DEVIATION ORDER.

(See sect. 24 of the Act and notes thereto.)

THE LIGHT RAILWAYS ACT 1896.

—— LIGHT RAILWAYS (DEVIATION &c.) ORDER 19 .

ORDER AUTHORISING THE DEVIATION OF A LIGHT RAILWAY
AUTHORISED BY THE —— LIGHT RAILWAYS ORDER 19 .

Preamble.

WHEREAS by the Light Railways Order 19 (hereinafter referred to as “the principal Order”) the *Light Railway Company* were authorised to construct Light Railways at in the County of AND WHEREAS an application was in 19 duly made to the Light Railway Commissioners by the said *company* in pursuance of the Light Railways Act 1896 for an Order to authorise the deviation of the said light railways hereinafter described Now we the Light Railway Commissioners being satisfied after local inquiry of the expediency of granting the said application do in pursuance of the said Act and by virtue and in exercise of the powers thereby vested in and of every other power enabling us in this behalf ORDER as follows :—

Short title.

Interpretation.

Application and amendment of provisions of

1. *As ante*, p. 550.

2. *As ante*, pp. 550, 586.

3.—(1.) Except as otherwise in this Order expressly provided the provisions of the principal Order and of the enactments incorporated therewith shall as amended by this Order and so far as they are

applicable apply to the deviation of the railway and to the works in connection therewith by this Order authorised as if they had been part of the railways authorised by the principal Order and to the *company*.

(2.) Sections of the principal Order are hereby amended and shall be read as if the expression "commencement of this Order" therein contained meant the commencement of this Order and not the commencement of the principal Order.

4. Notwithstanding anything contained in the principal Order the *company* may make form lay down and maintain so much of Railway (No.) authorised by that Order as lies between and within the limits of deviation shown on the plans and sections.

5. Subject to the provisions of this Order the *company* may enter upon and take and use such of the lands delineated on the plans and described in the book of reference as may be required for the purposes of this Order.

6. *As ante*, p. 583.

Power to make a deviation in Railway (No.) authorised by the principal Order.
Power to take lands for purposes of Order.
Costs of Order.

PRECEDENT OF AN EXTENSION OF TIME ORDER FOR A LIGHT RAILWAY.

(See note (g) to sect. 11 of the Act and sect. 24 of the Act and
notes thereto.)

THE LIGHT RAILWAYS ACT 1896.

—— LIGHT RAILWAY (EXTENSION OF TIME) ORDER 19 .

ORDER AMENDING THE —— LIGHT RAILWAY ORDER, 19 .

Preamble. WHEREAS by the Light Railway Order 19 (hereinafter referred to as “the Order of 19 ”) the *Light Railway Company* (hereinafter referred to as “the *company*”) were incorporated and authorised to construct a light railway in the county of from to And whereas it was provided by the Order of 19 that the powers of the *company* for the compulsory purchase of lands for the purposes of that Order should cease after the day of 19 and also that if the said railway were not completed before the day of 19 or such extended time as the Board of Trade might approve then on the expiration of that period the powers of the *company* for making and completing the same or otherwise in relation thereto (except as to so much thereof as might be then completed) should cease And whereas an application was in 19 duly made to the Light Railway Commissioners by the *company* for an Order extending the respective times limited as aforesaid by the Order of 19 for the compulsory purchase of lands and for the completion of the railway Now we the Light Railway Commissioners being satisfied of the expediency of granting the said application do in pursuance of the Light Railways Act 1896 and by virtue of and in exercise of the powers

thereby vested in and of every other power enabling us in this behalf ORDER as follows :—

1. This Order may be cited as “The Light Railway Short title.
(Extension of Time) Order 1901 ” and shall come into force on the
date on which it is confirmed by the Board of Trade.

2. Part II. (Extension of Time) of the Railways Clauses Act 1863 is hereby incorporated with this Order. Incorporation
of general
Act.

3.—(1) Section of the Order of 19 (Period for compulsory Amendment
of Order of
19 .
purchase of lands) shall be read and have effect as if the period of
five years had been named therein instead of *three* years.

(2) Section of the Order of 19 (Period for completion of
works) shall be read and have effect as if the period of *seven* years
had been named therein instead of *five* years.

4. *As ante*, p. 583.

Costs of
Order.

PRECEDENT OF AN ORDER FOR THE
ABANDONMENT OF A PORTION OF A
LIGHT RAILWAY.

(See sect. 24 of the Act and notes thereto.)

THE LIGHT RAILWAYS ACT 1896.

— LIGHT RAILWAY (AMENDMENT)
ORDER 19 .

ORDER AMENDING THE — LIGHT RAILWAY ORDER, 19 .

Preamble. WHEREAS by the Light Railway Order 19 (hereinafter referred to as “the Order of 19 ”) the *Light Railway Company* (hereinafter referred to as “the *company*”) were authorised to construct a light railway in the county of from to (hereinafter referred to as “the railway”) And whereas an application was in 19 duly made to the Light Railway Commissioners by the *company* for an Order to amend the Order of 19 and to authorise the abandonment of the portion of the railway hereinafter described between and Now we the Light Railway Commissioners being satisfied of the expediency of granting the said application do in pursuance of the Light Railways Act 1896 and by virtue and in exercise of the powers thereby vested in and of every other power enabling us in this behalf ORDER as follows:—

Short title. 1. This Order may be cited as “The Light Railway (Amendment) Order 19 ” and shall come into force on the date on which it is confirmed by the Board of Trade and that date is hereinafter referred to as “the commencement of this Order.”

2. The *company* shall abandon the construction of so much of the railway as lies to the *westward* of a point miles furlongs and chains or thereabouts from the authorised point of commencement of the railway (hereinafter referred to as “the *western* section”) and the Order of 19 shall be read and have effect as if the *western* section had not formed part of the railway.

Abandonment
of portion of
the Light
Railway.

3. The abandonment by the *company* under the authority of this Order of the *western* section shall not prejudice or affect the right of the owner or occupier of any land to receive compensation for any damage occasioned by the entry of the *company* on such land for the purpose of surveying and taking levels or probing or boring to ascertain the nature of the soil or setting out of the lines of the *western* section and shall not prejudice or affect the right of the owner or occupier of any land which has been temporarily occupied by the *company* to receive compensation for such temporary occupation or for any loss damage or injury which has been sustained by such owner or occupier by reason thereof or of the exercise as regards such land of any of the powers contained in the Railways Clauses Consolidation Act 1845 or the Order of 19 .

Compensation
for damage
to land by
entry.

4. When before the commencement of this Order any contract has been entered into or notice given by the *company* for the purchasing of any land for the purposes of or in relation to the *western* section the *company* shall be released from all liability to purchase or to complete the purchase of any such land but notwithstanding full compensation shall be made by the *company* to the owners and occupiers or other persons interested in such land for all injury or damage sustained by them respectively by reason of the purchase not being completed pursuant to the contract or notice and the amount and application of the compensation shall except so far as may in any case be otherwise agreed in writing between the parties be determined in manner provided by the Lands Clauses Acts as varied by the Light Railways Act 1896 for determining the amount and application of compensation paid for lands taken under the provisions thereof.

Compensation
in respect of
purchase of
land.

5. *As ante*, p. 583.

Costs of
Order.

INDEX.

[References to the Dissertations and Notes are printed in *italics*.]

ABANDONMENT,

- bill for, notices required on application for, 387.
 - to be reported on by Board of Trade, 411.
- deposit, release of and payment of compensation out of, 297, 299, 336, 337.
 - repayment of, where part of line abandoned, 300, 301.
- light railways, of,
 - amending order, by, 517.
 - compensation to landowners, 645.
 - form of order, 644.
 - notices required, 632.
 - general railway Acts, under, 496.
- tramways, of, by amending Order, 114.

“ABUTTING ON.” *See* FRONTAGERS.

ACCIDENTS. *See also* MASTER AND SERVANT.

- contributory negligence, when a defence, generally, 243.
 - in the case of tramway and omnibus accidents, what constitutes, 248.
- costs, 252.
- damages, in case of tramway accidents, measure of, 251.
- doctors' reports, how far privileged, 251.
- electricity, due to. *See* ELECTRICITY AND ELECTRICAL APPARATUS.
- employment of competent engineer or purchase from competent manufacturer no defence, 235.
- evidence, &c., 251.
- insurance against tramway accidents, interpretation of policies, 252.
- liability of promoters and lessees for, where due to default of themselves or their servants, 223. *And see* MASTER AND SERVANT.
- liability for, where contract between road authority and promoters, 146, 147.
- licensee of tramways liable for, 169, 170.
- negligence, what constitutes, generally, 243.
 - in the case of tramway and omnibus accidents, 247.
 - of a third party, 250.
- notice of, in case of tramways, 86.
 - in case of light railways, 86, 89.
 - form of, 381.
- poles, due to. *See* ELECTRICITY AND ELECTRICAL APPARATUS.
- public authorities, action against, 244.
- rails, due to non-repair or position of, 133.
- Regulation of Railways Act, 1868, determination of compensation under, 245.
- reports of accidents, how far privileged, 251.

ACCIDENTS—*continued.*

statutory powers no defence, 234.

track, due to non-repair of, 145, 235.

Tramways Act, 1870, does not enlarge liability of promoters and lessees, 233.

trolley pole, due to. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

wires, due to. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

ACCOUNTS,

audit of. *See* AUDIT.

of tramways, 83.

ACTS OF PARLIAMENT. *See* INCORPORATION OF ACTS; STATUTORY POWERS.ADVANCES. *See* LOCAL AUTHORITIES; TREASURY.ADVERTISEMENT. *See also* NOTICES; STANDING ORDERS OF PARLIAMENT.

by-laws of local or road authority as to advertisements on carriages, 617.

not to be displayed on posts, standards or brackets, 602.

AMALGAMATION. *See* WORKING AGREEMENTS.

AMENDING ORDERS,

for tramways. *See* PROVISIONAL ORDERS UNDER TRAMWAYS ACT, 1870; MILITARY TRAMWAYS.

for light railways.

conditions of making, 514.

forms of orders, 638 *sqq.*

notices on applications for, 532, 536.

power to make, 514.

procedure on making, 514, 536.

subject-matter of:—

abandonment of part of an undertaking, 517.

alterations of capital and borrowing powers, 517.

of rates, 517.

of, and additions to, works, 515.

extension of time, 516.

working agreements, 517.

ANIMAL POWER,

on light railways of Class B. with consent of local and road authorities, 614.

to be employed, where no other power prescribed for a tramway, 160, 432.

ANIMAL TRAFFIC. *See* GOODS TRAFFIC.

APPLICATIONS,

A. *For leave to bring in a private Bill.* *See* STANDING ORDERS OF PARLIAMENT.

B. *For tramway Provisional Orders.*

amending orders, for. *See* PROVISIONAL ORDERS UNDER TRAMWAYS ACT, 1870.

approval and consent of local authorities. *See* LOCAL AUTHORITIES.

deposit of documents on. *See* DEPOSIT OF DOCUMENTS, &c.

joint applications by local authorities, for, 115.

notices to be given on. *See* NOTICES.

to intending objectors, 326.

objections to, 100, 101.

persons and bodies who may apply, 95.

APPLICATIONS—*continued*.

- C. *For Military and Naval Tramway Orders*,
by Secretary of State or Admiralty, 287, 296.
for use of tramways, by local authority, &c., 293.
- D. *For Orders under Private Legislation Procedure (Scotland) Act*, 1899.
See SCOTLAND.
- E. *For Light Railway Orders*.
amending Orders, for. *See* AMENDING ORDERS.
competing schemes, grounds of Commissioners' preference for either, 470.
conditional grant of application, 470.
subject to special report to Board of Trade, 473.
dates when applications should be made, 534.
draft Order to be supplied by promoters on payment, 529.
fees payable on, 535.
joint applications by bodies and individuals, 453, 454.
in Scotland, 520, 521.
joint committees of councils may be appointed for the purpose of joint applications, 504, 524.
landowners to be consulted, 463.
Light Railway Commissioners are to receive, 453.
local authorities, by. *See* LOCAL AUTHORITIES.
local and road authorities to be consulted, 463, 465.
local authorities, how far their opposition has prevailed, 465.
local inquiries on. *See* LOCAL INQUIRIES.
notices to be given of applications, 463, 466. *And see* NOTICES.
objections, manner of making, &c. *See also* BOARD OF TRADE.
may be made in any way, 464, 467.
personally or by agent, 468.
Rules prescribe they must be made in writing, 45, 529.
objections, nature of. *See also* BOARD OF TRADE.
may be of any kind, 45, 46.
interference with public or private rights, 468.
insufficient public advantage, 468, 469.
physical interference or competition with railway, &c., 468.
to the jurisdiction, 451.
unprofitable nature of scheme, 470.
rejection of, grounds for,
that a local authority have or seek similar powers, 452.
that the line is a purely urban tramway, 451.
that the line will be on a private road, 452.
who may make, 6, 453.

ARBITRATION,

In the case of Tramways,

- Board of Trade or its nominee, by, 83, 266.
conduct of arbitration, &c., provisions as to, 445.
costs in England, 445.
in Scotland, 446, 519.
daily service of cars, as to, 439.
electrical interference and electrolysis, with respect to, 435.
materials excavated, as to, 432.
Postmaster-General and promoters, as between, 438.

ARBITRATION—*continued.**In the case of Tramways—continued.*

purchase-money to be settled by referee appointed by Board of

Trade on purchase by local authority, 176.

conduct of proceedings under these circumstances, 187.

referee to be nominated by Board of Trade in the case of differences

arising under Tramways Act, 1870..157, 158, 159.

In the case of Light Railways,

under general railway Acts, 495, 497.

under Light Railways Act, 1896..498.

appointment of arbitrator, 498.

Board of Trade's powers, 498.

compensation, how to be assessed, 498, 499.

costs, rules as to, 498, 538.

counsel's fees, 498, 540, 541.

England, Arbitration Act, 1889, to apply in, 498.

Scotland, provisions which are to apply in, 518.

under Light Railway Orders,

breaking up roads, 593, 609.

bridges and culverts, 602.

commons, 564.

completion of works and reinstatement of road, 594.

crossings, passing places, junctions, &c., 593.

electricity, injurious affection by, 571, 616.

gas and water, &c. companies, differences with, 607.

general provisions as to, 583, 632.

manholes, 609.

material, surplus, application of, 595.

railway and canal companies, differences with, 563, 605.

repair, &c. of roads, 560, 596.

roadside wastes, method of construction of light railway on, 597.

road widening, 589.

sanitary authorities, differences with, 565.

special provisions in certain Orders, 483, 499.

temporary lines, 612.

traction on light railways of Class B., method of, 614.

ARREST,

circumstances under which promoters, lessees and their servants may
arrest, 214, 217, 218, 219.

false imprisonment, action for, lies against a corporation, 215.

liability of master for servant's act. *See* MASTER AND SERVANT.

licensees of tramways, their officers and servants have no power to de-
tain or arrest, 167.

AUDIT,

future Acts as to railway audits to apply to light railways, 583, 632.

of accounts of advances to light railway company, 489, 580.

of local authority's tramway accounts, 444.

light railway accounts, 580, 629.

of tramway accounts, 83.

BELL,

by-laws as to bell, whistle, &c. on mechanical tramways and light
railways (Class B.), 354, 433, 614.

on electric tramways and light rail-
ways (Class B.), 367, 614.

driver to sound bell when vehicle in the way of his car, 375.

BICYCLES AND TRICYCLES. *See* PASSENGER TRAFFIC.

BOARD OF AGRICULTURE. *See also* COMMONS.

deposits with, on application for light railway Order, 528, 529.

sanction of, to free gifts of land and contributions charged on land for light railways, 505, 506, 507, 508, 531.

title now Board of Agriculture and Fisheries, lxxvi.

BOARD OF TRADE,

definition of, 98.

With regard to Tramways,

accidents, form of return, 380.

amending Orders may be made by, 114.

arbitrations. *See* ARBITRATIONS.

Bills, report to be made on certain,

for abandonment, 411.

for borrowing by local authorities, 413.

for level crossings over other lines, 405.

for levying increased tolls, 404.

by-laws may be disallowed by, 196, 198.

clearance, memorandum as to, 341.

commencement, completion and suspension of works, powers as to, 115, 116, 117.

compulsory powers prohibited, certificate where non-completion due to prohibition, 410.

consent of local and road authorities dispensed with under the two-thirds rule, report to be made, 98.

consent of Board to alteration of tramways, 429.

to deviation of tramways, 430.

to working agreements, 442.

to agreements between promoters and road authorities, 443.

deposits, not liable for errors in warrants or certificates in respect of, 338.

powers in relation to, 337.

deposit of documents with, 275, 329.

discontinuance of tramway, may declare, 170, 388, 390.

disputes, appointment of engineer to settle, 150.

electrical accidents, return to be made to Board of, 367.

form of return, 381.

electrical power, regulations for the use of. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

electric records to be forwarded to, when required, 361.

expenses of local authorities, powers of Board with respect to, 121, 122.

requirements of, with respect to, 123.

extension of time, rules for applications to Board for, 338.

fee payable to, under Tramways Rules, 331.

gauge, may allow alteration of, 427.

inquiries held by, regulations governing, 264. *And see* LOCAL INQUIRIES.

insolvency of promoters, on, may order inquiry and cesser of powers, 172.

inspection of tramway engines, carriages and machinery, 353, 365, 370.

inspection where complaint made of non-repair by promoters, 428.

BOARD OF TRADE—*continued*.*With regard to Tramways*—*continued*.

- leases to be approved by, 118.
- licences to use tramways may be granted by, after inquiry, 166.
- mechanical power, authority to make regulations for use of, and to prohibit, 432.
- report to be made to Parliament on such prohibition, 433.
- regulations as to. *See* MECHANICAL POWER.
- military tramways, powers with regard to, 287—294.
- objections to be considered by, 100, 101.
- opening, control over. *See* OPENING.
- Private Legislation Procedure (Scotland) Act, 1899, does not affect power to make Provisional Orders, 322.
- proof of Orders, regulations and by-laws, 444.
- Provisional Orders to be made and settled by, 101, 115, 423.
- purchase of tramways to be approved by, 176, 190.
- such approval not given *ex post facto*, 178, 191.
- rails and sub-structure of tramway, requirements as to, 340, 341.
- rates and charges, may order revision of, 411.
- referee appointed by, in case of differences under the Tramways Act, 157, 158, 159.
- regulations for steam or other mechanical power, 352.
- roads, breaking up of, by promoters, plan and materials to be approved by Board, 427.
- running powers of local authority, approval of, 413.
- time, extension of, 338, 426.
- workmen's cars, may order provision of, 441.

With regard to Light Railways,

- alteration of lines after construction, to be approved by Board, 598.
- differences as to, between company and road authority to be determined by Board, 598.
- amending Orders, duties in connection with, 514. *And see* AMENDING ORDERS.
- appeal of council to, from Commissioners' refusal to make Order, 464, 467.
- appointment of Commissioners and officials by, 450.
- authentication of Orders and regulations, method of, 631.
- Bills, report to be made on certain, 404, 405, 411, 413.
- by-laws of local or road authority to be approved by, 617.
- confirmation of Orders by, 6, 472.
- effect of, 6, 477, 478.
- grounds of refusal of, 6, 474, 475.
- consideration of Order by, 473, 474.
- construction, method of, to be approved by Board, 594, 597.
- differences as to, between company and road authority to be determined by Board, 597.
- deposits, powers in relation to, 581, 582.
- discontinuance may be declared by, 621.
- expenses of, how to be defrayed, 500.
- extension of time for works, power to allow, 556, 592.
- fees fixed by Treasury on recommendation of Board, 500, 535.
- foreshore, consent of Board necessary to interference by light railway, 509.
- historical objects and scenery, duty as to, 512.
- inquiries held by. *See* LOCAL INQUIRIES.

BOARD OF TRADE—*continued.**With regard to Light Railways—continued.*

- insolvency of company may be declared after inquiry by, 622.
- junctions, control over, 513.
- level crossing, Board may require gates at, 558.
- local authority proposing to construct, &c. outside district, control over, 455, 457.
- local inquiries may be held by, 474.
 - provisions governing such local inquiries, 500, 501.
 - expenses of Board on, how defrayed, 501.
- mechanical power, regulations for use of, to be made by, 569, 614.
 - regulations as to. *See* MECHANICAL POWER.
 - may be prohibited or only allowed subject to conditions on default of company, 570, 615.
- modification of Orders by, 6, 474, 477, 478.
- notice of proposed confirmation to be given by the Board, 473.
 - contents of notice, 473.
- notices to, of works on foreshore, 529.
- objections to be taken before, 45, 474, 477.
 - who may object, 474, 477.
 - need not have been taken before the Commissioners, 45.
 - of promoters, 46.
 - must be lodged within the time limited by the notice, 473.
- opening, control over. *See* OPENING.
- Parliament, may submit Order to, 474, 475.
 - grounds for so doing, 474, 475.
- posts, standards, brackets and attachments, approval of, and settlement of differences between company and road authority, 599, 600, 601.
- purchase on discontinuance or insolvency, date to be fixed by Board, 624.
- purchase of railway outside district, to be approved by Board, on what conditions, 624.
- rates and charges may be revised by, on representation of local authority or ratepayers, 619.
- rates for goods may be reduced by, 574.
- remitting of Orders to Commissioners by, 474, 477.
- reports, annual, construction of references to, 479.
 - to be made to Parliament, 501.
- reports on variations of Lands Clauses Acts to be made to Parliament, 478, 480.
- rules may be made by, for regulating procedure under Light Railways Act, 1896., 500.
- rules at present in force, 527.
- running powers, agreements for, to be subject to approval of, 612.
- safety of public to be ensured by, 474, 476.
- service of cars, differences as to, may be determined by, 610.
- through traffic, agreements as to, to be subject to approval of, 613.
- traction on railways of Class A., system of, to be approved by, 569.
- Treasury advance, certificate of Board before making of, 462.
- working agreements to be subject to approval of, 613.

BOOKS OF REFERENCE. *See* DEPOSIT OF DOCUMENTS, &c.; STANDING ORDERS OF PARLIAMENT.

BRACKETS. *See* ELECTRICITY AND ELECTRICAL APPARATUS: FRONTAGERS.

BRAKES,

- cable cars, on, 369.
- Continuous Brakes Act, 1878, application to tramways of, 84.
- electric cars, on, 364, 365, 614.
- emergency brakes on tramway carriages, 353.
- engines, on tramway, 352.

BRIDGES AND CULVERTS,

- breaking up road on, for the purposes of a tramway, 135, 140.
- interference with, by light railway, 593.
- light railway not to affect power of owner, &c. to alter, &c., 591.
- locus standi* in respect of,
 - of local authorities, 32, 33.
 - of railways, 17.
- notices to local authorities under Tramways Rules in respect of, 326.
- protective clauses for owners of bridges and culverts, 602.
- railways, clauses as to construction of bridges over, 558.
- railway and canal bridges, protective clauses as to, 604, 605.
- repair of, by light railway company, 560.
- repair of tramway, &c. bridge, by urban authority under Public Health Act, 1875..147, 148.
- roads and footways, clause as to construction of bridges over, 557.
- swing-bridge, management of, under light railway Order, 483.

BY-LAWS,

- cable traction, for, 369.
- disallowance of, by Board of Trade, 196.
- evidence, how by-laws are to be given in, 203.
- exhibition of, in and on carriages, 355, 367, 370, 615.
- fares and tickets, as to, validity, 212 *sqq.*
- hackney carriages, by-laws made for, apply to tramways, 206. *And see HACKNEY CARRIAGES.*
- Highway Acts, effect of by-laws on prosecutions for furious driving under, 196.
- interpretation of expressions used in, 203.
- invalidity of, (a) when made by local authorities, (b) when made by promoters, 199.
- light railways (Class B.), Board of Trade to approve by-laws for, 617.
 - special provisions as to by-laws in certain Orders, 486, 487.
- local authority may make what, for tramways, 195.
 - for light railways (Class B.), 617.
- local authority may make, in lieu of promoters, where tramways solely worked by them, 412.
- local authority, model form of by-laws made by, 375.
- mandamus to make, 202.
- mechanical tramways, for, 354.
 - may be made by Board of Trade, 433.
- military tramways, power to make by-laws for, 291.
- nature of by-laws in general, 198.
- notice of, 278.
- observance of protective by-law necessary on part of those who seek to enforce it, 200.
- passengers, as to conduct of. *See PASSENGERS.*
- penal by-laws must be clear and precise, 200.
- penalties may be imposed by, 203, 617.

BY-LAWS—*continued*.

- penalties for non-observance of by-laws made by Board of Trade, 355, 367, 370, 376, 379, 434.
- how recovered, 355, 368, 444.
- prohibitive by-laws, how far valid, 199.
- promoters may make what, for tramways, 195, 377.
- proof of Board of Trade's by-laws, 444.
- publication of, 196, 617.
- railway by-laws to be observed by light railway company using the railway, 568.
- reasonable in respect of penalties, when, 203.
- reasonable, what tramway by-laws have been held to be, 201, 207, 208.
- repeal and alteration of, 196.
- road authority may make, for light railway (Class B.), 617.
- servant, breach of by-law by, liability of master unless act criminal, 200.
- severable, how far, 200.
- Sunday traffic, whether may be prohibited by by-laws, 200.
- ticket, as to showing and delivering up, validity, 201, 202, 213.
- tramway company, form of by-laws made by, 377.

CABLE TRACTION. *See* MECHANICAL POWER.**CABS.** *See* HACKNEY CARRIAGES.**CANALS,**

- crossing of, to be marked on plans under Tramways Rules, 328.
- light railway not to affect power of proprietors to alter, &c. works, 591.
- notices to proprietors under Tramways Rules, 326.
- under Light Railways Rules, 532.
- power of undertakers to alter, &c. not affected by tramway, 262.
- protective clauses for, in light railway Orders, 494, 604.

CAPITAL,

- additional capital, power to raise, 488.
- amending Orders affecting, what has been authorized by, 517.
- application of capital moneys, 577, 620.
- borrowing powers in proportion to capital, 576.
- calls, 576.
- clauses as to, in light railway Orders, 575, 620.
- where promoters an existing railway company, 488.
- debentures and debenture stock. *See* MORTGAGES.
- deposits not to be paid out of capital, 578, 621.
- dividends. *See* PROFITS.
- interest on calls not to be paid out of capital, 620.
- on capital during construction, 577.
- mortgages. *See* MORTGAGES.
- preference shares, provisions in Orders as to, 575.
- amending Orders as to, 517.
- profits. *See* PROFITS.
- railway company, subscription to light railway company by, 576.
- receipts of persons not *sui juris*, 576.
- receiver, appointment of, 577.
- returns of, in case of tramways, 85.
- in case of light railways, 85, 89.
- share capital, defined in Light Railways Act, 1896, 523.

CARRIAGES,

- accidents due to tramway and light railway carriages, *242 sqq.* *See also ACCIDENTS; MASTER AND SERVANT.*
- advertisements on. *See ADVERTISEMENTS.*
- cable traction, regulations for carriages drawn by, 370.
- coach, tramway carriage a, 160.
- construction of, on mechanical tramways and light railways (Class B.), 353, 614.
- coupling of, on mechanical tramways and light railways (Class B.), 353, 364, 614.
- distance between, by-laws as to, 617.
- entrance and exit, regulations and by-laws as to, for mechanical tramways and light railways (Class B.), 354, 364, 367, 370, 434, 615.
- flange-wheeled carriages, user of, confined to promoters and their lessees, 160, 162, 610.
- penalty for unauthorised use of such carriages or other carriages suitable for tramways only, 222.
- in case of military tramways, 290.
- hackney carriage, tramway or light railway (Class B.) carriage, how far a, 161.
- inspection by Board of Trade, 365.
- lights on. *See LIGHTS.*
- obstruction of, penalty for, and what constitutes obstruction, 211, 290.
- omnibus, tramway carriage not an, 161.
- overcrowding, by-laws as to, 378, 379, 617.
- overhead trolley system, regulations as to carriages, 363.
- passing of. *See PASSING OF CARRIAGES.*
- public, right of, to pass with carriages over tramway and light railway (Class B.), 264, 591.
- service of. *See TRAFFIC.*
- single-decked carriages, regulations providing for the use of, 364.
- stage carriage, tramway or light railway (Class B.) carriage a, 160, 161.
- stopping of. *See STOPPING OF TRAMWAY AND LIGHT RAILWAY ENGINES AND CARRIAGES.*
- trailing carriages authorised, 165.
- regulations as to, 364.
- weight of, on light railways (Class A.), 5, 485, 567.
- width of tramway carriages, 133, 160, 165, 427.
- of light railway (Class B.) carriages, 486, 610.

CATCH-POINTS. *See POINTS.*

CATTLE-GUARDS. *See FENCING.*

CHARGES. *See TOLLS.*

CHEAP TRAINS. *See WORKMEN'S TICKETS AND TRAINS.*

CLAUSES,

- agreed clauses not necessarily inserted by Commissioners and Board of Trade, 493.
- consent of local authorities, clauses embodying terms of, 97.
- delivery of, to agents for an Order under Tramways Rules, 332.
- filled-up Order containing, deposit at Board of Trade of, 332.
- interpretation of, what evidence may be employed, 127.

CLAUSES—*continued.*

- light railway Orders, power to insert in, 479, 493.
- model clauses, 494, 555, 561 *sqq.*, 603 *sqq.*
 - canal company, 604.
 - commons, 564.
 - gas and water companies, 606.
 - manholes, 609.
 - Postmaster-General, 571, 608.
 - railway company, 561, 604.
 - sewers and drains of sanitary authorities, 564, 607.
 - telephone company, 555.
 - tramway proprietors, 605.
- notices to be given of proposed alteration of protective clauses by Bill, 387.
- notices to be given of proposed alteration of protective clauses by light railway Order, 532.

CLAUSES ACTS,

- application of, to light railways, 87, 494, 550, 587.
- defined in Light Railways Act, 1896., 523.
- incorporation of, in light railway Orders, 478, 480, 494.
- Scotland, defined for, in Light Railways Act. 1896., 520, 522.
- varied by light railway Order, 551.

CLEARANCE. *See* RAILS.

COMMENCEMENT OF TRAMWAYS,

- evidence of non-commencement, 116, 117.
- extension of time for commencement by Board of Trade, 116, 117.
 - applications for, how to be made, 338.
 - notices and advertisements of applications, 339.
- substantial commencement within one year necessary under Provisional Order, 115, 117.
- meaning of, 116.

COMMISSIONERS, LIGHT RAILWAY. *See* LIGHT RAILWAY COMMISSIONERS.COMMISSIONERS OF WOODS. *See* CROWN.

COMMONS,

- clause for protection of, 563.
- compensation for, how assessed, 511.
- consent of Board of Agriculture required to taking, for purposes of light railway, 510, 534.
- conditions under which such consent is given, 510.
- definition of, for purposes of Light Railways Act, 1896., 510, 511, 512.
- notices to Board of Agriculture where commons to be taken, 529.
- recital as to taking of, 549.

COMPANIES CLAUSES ACTS. *See* CLAUSES ACTS.COMPENSATION. *See also* COMPULSORY PURCHASE OF LAND; EXPENSES.

- abandonment of light railway, compensation to landowners on, 645.
- assessment of. *See* ARBITRATION.
- betterment of remaining and contiguous lands to be considered under Light Railways Act, 1896., 498, 499.
- common lands, for, how assessed, 511.

COMPENSATION—*continued*.

- deposit, application of, as compensation. *See* DEPOSIT.
- disability, payment to trustees for persons under, 500, 554.
- interference with pipes and mains, for, 150, 607.
- interference with tramway by breaking up roads, for, 155, 608.
- roads, for use of, 481.
- roadside wastes, for use of, 481.
- servants and workmen, to. *See* MASTER AND SERVANT.
- statutory powers, for misuse of, 225.
- telephone company, for wayleaves over light railway of, 493, 555.

COMPETITION,

- light railway Orders, objections to, on the ground of competition, 468.
- light railway Orders submitted to Parliament on the ground of, 474, 475.
- locus standi* in respect of, 13, 37, 39, 42, 48.

COMPLETION,*Of Tramways,*

- completion within two years necessary under Provisional Order, 115.
- deposit released after deductions on non-completion, 297, 299.
- effect of non-completion, 116.
- evidence of non-completion, 116, 117.
- extension of time for completion by the Board of Trade, 116, 117.
 - application for, how to be made, 338.
 - notices and advertisements of application, 339.
 - what allowed under Standing Orders, 410.
- time for completion allowed under Standing Orders, 410.

Of Light Railways,

- extension of time by Board of Trade, 556, 592.
 - by amending Order, 516.
 - form of Order, 642.

COMPULSORY PURCHASE OF LANDS. *See also* LANDS.

- assenting and dissenting owners, lists to be made of, under Standing Orders, 386.
- compensation, how to be assessed under Light Railways Act, 1896..498, 499. *And see* ARBITRATION.
- damage suffered may be defrayed out of deposit on non-completion, 297, 298, 299.
- disability, payment of purchase-money to trustees for persons under, 500.
- easements, compulsory purchase of. *See* EASEMENTS.
- extension of time by amending light railway Orders, 516.
 - form of Order, 642.
- lease in lieu of purchase, 554.
- light railways, for, clauses as to, 554.
 - how far permitted, 6, 478, 480.
- military tramways, for, 289.
- notices by advertisement of promotion of Bills for, 383.
 - to owners, 386.
- Provisional Order may not authorise, 3, 101, 111, 112, 424.
- revivor of powers by amending light railway Order, 516.
- road widenings, for, authorised by amending light railway Orders, 516.
 - compulsory powers must be applied for, where required, 481.
- time limited for, by light railway Orders, 479, 480, 554.

COMPULSORY PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.

CONDUCTORS OF CARRIAGES. *See also* MASTER AND SERVANT.

agreements with, 161, 162.

cable cars, not to leave, during journey, 370.

duties of, by-laws as to, 375.

Employers' Liability Act, whether it applies to, 253.

CONDUCTORS, ELECTRIC. *See* WIRES; ELECTRICITY AND ELECTRICAL APPARATUS.

CONDUIT SYSTEM. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

CONFIRMATION,

A. Of Tramway Provisional Orders,

amending Order, of, 114.

confirmation to be by Parliament, 109.

conclusive *omnia rite esse acta*, 110.

procedure on Bills for, to be like that on private Bills, 405.

Confirmation Act, model form of, 423.

is a Public General Act, 110.

deposits in duplicate under Standing Orders, 392.

petitions against confirmation, and hearing thereof, 109, 110, 402, 405, 413.

B. Of Military Tramway Orders,

by Order in Council, if unopposed, 293.

by Parliament, if opposed, 292.

C. Of Provisional Orders under Private Legislation Procedure (Scotland) Act, 1899..316, 317, 318.

D. Of Light Railway Orders. *See* BOARD OF TRADE.

CONSENTS. *See* FRONTAGERS; LOCAL AUTHORITIES.

CONTRACTORS,

duty, if imposed on the promoters, preserves their liability as against contractors, 230.

liability as between promoters and contractors, 229 *seq.*

road authority contracting, effect of. *See* ROAD AUTHORITY.

CONTRIBUTORY NEGLIGENCE. *See* ACCIDENTS; ELECTRICITY AND ELECTRICAL APPARATUS.

COSTS. *See also* EXPENSES; FEES.

arbitrations by the Board of Trade or their nominee, of. *See* ARBITRATION.

light railway Order, of, how to be borne, 583, 633.

Light Railways (Costs) Rules, 1898..538.

opposition, of, to Provisional Order Confirmation Bill, 110.

preliminary. *See* PROMOTERS.

Provisional Order, of making, 107.

to be taxed on the Chancery scale, 107.

security for, may be required by Board of Trade under Tramways Rules, 331.

COUNTY COUNCILS. *See also* LOCAL AUTHORITIES.

applications for tramway Orders by, not authorised, 272.

light railway Orders by, appropriate clauses, 453, 489.

Bills, costs of, in promoting and opposing, lxxvi, 110.

by-laws for light railways may be made by, 487.

expenses of, in respect of light railways may be made chargeable on certain parishes only, 501, 503.

goods traffic on light railways, power to make by-laws as to, 486.

locus standi of, 32, 403, 404.

purchase of light railway by, provisions as to, 625, 626.

superintendence of light railway works by, 484.

COUPLINGS. *See* CARRIAGES.CROSSINGS. *See* LEVEL CROSSINGS.

CROSS-OVER ROADS,

construction of, for purposes of tramway, 430.

light railway (Class B.), 590.

CROWN. *See also* BOARD OF AGRICULTURE; BOARD OF TRADE; POSTMASTER-GENERAL; TREASURY.

Commissioners of Woods may convey lands for purposes of light railway, 508, 509.

objections to light railway Orders taken by, 510.

compulsory taking of Crown lands not authorised by Light Railways Act, 1896.. 509.

Crown rights, saving of, in light railway Orders, 510.

deposits, rights in respect of. *See* DEPOSITS.

deposits with Government Departments under Standing Orders, 390.

on application for light railway Orders, 528.

Duchy of Lancaster, clauses for protection of, 509.

foreshore, protective clauses for, 509.

Light Railways Act, 1896, does not bind, 509.

War Department, clauses for protection of, 509.

control of, over certain light railways, 509.

agreements with, for management of light railways, 509.

CULVERTS. *See* BRIDGES AND CULVERTS.CURRENTS AND CURRENT INDICATORS. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

CURVES,

radii permitted on light railways, 482, 584.

rails on curves, provisions as to, 584.

DAMAGES. *See* ACCIDENTS.

when damages may be recovered in addition to penalties, 209.

when granted in lieu of injunction, lxxvi, 227.

DANGEROUS GOODS,

civil liability for damage from bringing dangerous goods on tramways, 221.

guilty knowledge, whether necessary, to justify penalty, 220.

DANGEROUS GOODS—*continued*.

- liability of carriers, 222.
- loaded firearms not to be carried by passengers, 379.
- meaning of, in Tramways Act, 1870...220.
- notice, duty to give, before sending dangerous goods, 221.
- penalty for bringing, on tramways, 219.

DEBENTURES AND DEBENTURE STOCK. *See* MORTGAGES.**DEFENCE, NATIONAL.** *See also* CROWN.

- application of Acts to tramways, 85.
- to light railways, 85, 89, 497.
- conveyance of soldiers, sailors and police on light railways, 496.

DEPOSITS,

- Bills, on promotion of. *See* STANDING ORDERS OF PARLIAMENT.
- bonds, application of, same as that of deposit, 302.
- conductor of tramcar, forfeiture and return of deposit of, 161, 162.
- creditors, deposit to be applied for the benefit of, 298, 336, 582.
 - distinction between meritorious and non-meritorious, no longer exists, 301.
 - means general creditors of company and not of particular undertaking abandoned, 301.
 - includes persons who lent deposit money, solicitors, agents, engineers, &c., 301.
- Crown entitled to costs out of deposit, 300.
 - provisions as to forfeiture to, no longer absolute, 298, 300.
- depositors may be repaid deposit, subject to claims of creditors, &c., 298, 300, 337, 582.
- errors in warrants or certificates, 338, 582.
- extension Order, further deposit may be provided for in, 515, 639.
- forfeiture, application of deposit after, under old Tramway Rules, 108.
 - under Parliamentary Deposits and Bonds Act, 1892, and present Rules and light railway Orders, 109, 297, 336, 582.
- interest and dividends to be paid to depositors, 337, 582.
- investment of, 334, 581.
- landowners may be compensated out of, 297, 298, 300, 582.
- light railway, deposit required by Order from "new company" in case
 - of, 479, 491, 581.
 - application of, 582.
 - clauses in Order as to, 581, 627.
 - not to be paid out of capital, 578, 621.
 - repayment of, 581.
- locus standi* of local authority on bill for payment out of, 32.
- "new company," meaning of, 491.
- notice required before repayment of deposit, 298, 301.
- part of deposit, release of, 337, 582.
- penalty in lieu of, 107, 335, 491, 565, 610.
 - application of such penalty, 335, 566.
- Private Legislation Procedure (Scotland) Act, 1899, under, 422.
- promoters may be repaid residue of deposit, 300, 336, 337, 582.
- Provisional Order, sum to be deposited on making of, 107, 333.
 - method of deposit, 107, 333.
- receiver or liquidator, payment of deposit to, 337, 582.
- release of, on abandonment, &c., 297, 299, 337.

DEPOSITS—*continued*.

- repayment on whole or part of Provisional Order not having been confirmed, 337.
- road authorities may be compensated out of deposit, 298, 336.
- rules may be made by the Board of Trade in case of tramways as to, 267.
 - rules at present in force, 333.
- uncalled capital to be applied before deposit drawn upon, 302.
- unclaimed deposits, application of, 298.

DEPOSIT OF DOCUMENTS. &c.,

- A. *On promotion of a Private Bill.* See **STANDING ORDERS OF PARLIAMENT**.
- B. *On applications for Tramway Orders*, 99, 100, 275, 327.
 - amended plan and section, of, 332.
 - Board of Trade, deposits to be made with, 329.
 - duplicate to be deposited in Parliament, 392.
 - local authorities, with. See **LOCAL AUTHORITIES**.
 - map and diagram, of, 327.
 - plan and section, of, 327.
 - when amended, 109, 332.
 - proofs. See **PROOFS OF COMPLIANCE**.
 - Provisional Order, when made, 109, 276, 332.
 - rules may be made by Board of Trade, 267.
 - rules at present in force, 327.
- C. *Of Lease of Tramway to be made by a Local Authority*, 118, 277.
- D. *Under Private Legislation Procedure (Scotland) Act*, 1899..310, 311, 316, 317, 417, 418.
- E. *On application for Light Railway Orders*, 464, 467, 528, 529, 534.
 - Board of Trade, deposits to be made with, 528.
 - books of reference, what to contain, 530.
 - Commissioners, with, on application, 534.
 - estimates, form of, 533.
 - Government departments, with, 528.
 - local authorities, with, 528.
 - plaus, what they should show, 529.
 - posts, standards, and brackets, drawing and plan to be sent to road authority and Board of Trade, 600, 601.
 - sections, how to be drawn, 530.
 - works, plan and statement of, to be sent to Board of Trade and road authority and be open to public inspection before construction or alteration, 594, 597.

DETENTION. See **ARREST**.

DEVIATIONS,

- amending light railway Orders for, 515.
 - form of Order, 640.
- clauses for, in case of light railways (Class A.), 556.
 - in case of light railways of mixed type, 484.
- light railway Order, on what conditions inserted by Commissioners in, 471.
- plans must show, 529.
- tramways may deviate within limits by consent of Board of Trade, 430.

DIFFERENCES. See **ARBITRATION**.DIRECTORS. See *also* **LIGHT RAILWAY COMPANY**.

- consent of directors named in a Bill to be proved, 401.

DISCONTINUANCE,

Of Tramways,

- conditions which lead to discontinuance, 170, 171.
- deposit, release of, 297.
- failure to commence or complete in due time or suspension of works equivalent to, 116.
- injunction to restrain removal of tramway, 172.
- materials, ownership of, on discontinuance, 171, 172.
- purchase by local authority, 170, 175.
- road authority may remove tramway at promoters' expense, 171, 172.

Of Light Railways,

- Board of Trade may declare discontinuance, 621.
- effect of declaration, 621, 622.
- expenses of removal of rails, 621, 622.
- purchase by local authority, 623.
- removal of rails on, over level crossings, 483.
- on road, 621.
- special provision in an Order prohibiting discontinuance of part only, 487.

DISPUTES. *See* ARBITRATION.DISTRESS. *See* PENALTY ; TOLLS.DIVIDENDS. *See* PROFITS.DRAINS. *See* SEWERS.DRIVERS OF CARRIAGES. *See also* MASTER AND SERVANT.

- agreements with, 161, 162.
- by-laws as to the duties of, 375.
- Employers' Liability Act, whether it applies to, 253.
- furious driving, proceedings for, under by-laws and Highway Acts, 196.
- Locomotives Acts do not apply to, 197.

DYNAMOS. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

EASEMENTS,

- acquisition of, for tramways, 112.
- compulsory purchase of, for tramway, 113, 114.
- extent of easement for tramway, 112, 113.
- grant of tramway easement to tenants and feuars, 113.
- implied easement to lay a tramway, what constitutes an, 112, 113.
- increase of burden of, 113.
- persons under disability may grant for purposes of light railway, 554.

ELECTRICITY AND ELECTRICAL APPARATUS. *See also* MECHANICAL POWER ; POSTMASTER-GENERAL ; TELEGRAPHS AND TELEPHONES.

- accidents due to electric working, return to be made to Board of Trade of, 367.
- form of return, 381.
- alteration of existing electrical apparatus by promoters, 148, 151.
- amending Orders authorising use of electricity, 114, 516.
- brackets may be affixed with consent of owners and occupiers, 438, 509.
- breaking up street for, in spite of tramway, 154.
- care required from owners of electric apparatus, 240.

ELECTRICITY AND ELECTRICAL APPARATUS—*continued.*

- conductors may be erected and laid down by promoters on in under or over any road, 433, 465, 466, 590.
- regulations as to, 357, 365.
- conduit system, regulations for, 360, 368.
- contributory negligence in approaching or touching wires, 241.
- currents and current indicators, regulations as to, 358 *sqq.*
- dynamos, regulations as to, 357.
- electrical power not carried along with carriages, general provisions as to, 434, 570, 615.
- electrolysis, protection against, 434, 435, 570, 571, 616.
- escaping electricity, negligence presumed, 241.
- fuses, safety, to be provided, 365.
- generating stations, buildings and works may be erected by promoters, 433, 590.
- generators, regulations as to, 357.
- guard wires to be erected and maintained where wires cross above conductors, 367.
- accidents due to, 241, 381.
- proposed new regulations as to, with explanatory memorandum, 371.
- induction, protection against, 360, 434, 435, 570, 571, 616.
- injury caused by electricity to telephone or telegraph, 233.
- discussion of liability, whether there be statutory powers or not, 235 *sqq.*, 239.
- measure of damages, 238.
- insulation may be presumed, unless defect patent, 242.
- leakage, regulations as to, 359, 361.
- lighting, electric, apparatus, removal, &c. of, for purpose of light railway, 605.
- locus standi* in respect of electrical interference,
 - of gas and water companies, 35.
 - of railway companies, 18.
 - of telephone companies, 36.
- London Overhead Wires Act, 1891..229.
- notices where wires are within reach of passengers or public, 366.
- observatories and laboratories, protection for, 435, 617.
- overhead trolley system, regulations for, 363.
- penalties for non-compliance with electrical regulations and by-laws, 367.
- pipes, protection of, 361, 434, 435, 570, 571, 616.
- Postmaster-General, protection of. *See* POSTMASTER-GENERAL.
- posts, standards and brackets, provisions as to erection and alteration of, 433, 590, 599, 600, 601
 - duty and liability with respect to, 240.
 - unauthorised erection of, 228, 229.
- Railways (Electrical Power) Act, 1903..lxxvi, 496.
- rateability of wires, 56.
- recent appliances and inventions, how far promoters bound to adopt, 237, 239, 240.
- records, daily, monthly, quarterly, &c. to be kept, 361.
- regulations (model form) of Board of Trade for the use of electricity on tramways and light railways, 356.
- returns, insulated and uninsulated, regulations as to, 357.
- supply of electricity by local authority to promoters, 486.
- surface contact system, regulations for, 368.
- switch, cut-off, to be provided within reach of driver, 367.

ELECTRICITY AND ELECTRICAL APPARATUS—*continued.*

- trailing wire, when negligence presumed, 240, 241.
- trolley pole, accidents due to, 241, 381.
 - regulations as to, 366.
- trolley wire, accidents due to, 240, 241, 381.
 - regulations as to, 366.
- wires across roads, rights of local and road authorities as to, 229.
- wires, alteration of, if an obstruction, 600, 601.
 - may be erected and laid by promoters, 433, 590.
 - protection for, 361, 434, 435, 570, 571, 605, 616.
 - protection from breaking and falling, 565, 606.
 - rateability of, 56.
 - trailing, when negligence presumed, 240, 241.
 - trolley, 240, 241, 366, 381.

EMPLOYERS' LIABILITY. *See* MASTER AND SERVANT.EMPLOYMENT, SCOPE AND NATURE OF. *See* MASTER AND SERVANT.

ENGINES,

- Board of Trade's requirements as to, 352.
- couplings of, 353.
- lights on. *See* LIGHTS.
- tender foremost, not to run, at greater speed than fifteen miles an hour, 584.

ENTRY UPON LANDS,

- Provisional Order not to incorporate sections of Lands Clauses Acts authorising, 111, 112.

ESTIMATE. *See* DEPOSIT OF DOCUMENTS, &c.; STANDING ORDERS OF PARLIAMENT.EXPENSES. *See also* COSTS; FEES.

- bridges and culverts, of owners of, 603.
- county council, of, in respect of light railway may be made chargeable on certain parishes only, 501, 503.
- discontinuance, of removal of rails on, 171, 621, 622.
- gas, water, &c. companies, of, 607.
- insolvency of company, of removal of rails on, 173, 622.
- light railway Order, of, how to be borne, 583, 632.
- local authorities of, in respect of tramways and light railways. *See* LOCAL AUTHORITIES; PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.
- pipes and mains, of alteration of, 150, 607.
- Postmaster-General, of, 437, 572.
- preliminary expenses, what are included in, 130, 131.
 - recovery of. *See* PROMOTERS.
- railway and canal companies, of, 562, 563, 603, 604.
- recovery of, from light railway company, 583, 632.
- roads, of altering level of, 595.
 - of breaking up, after construction of tramway or light railway, 156, 609.
 - of repairing and re-instating, 141, 143, 594, 596.
- sanitary authorities, of, 153, 565.
- superintendence of works by road authority, of, 135, 139, 592.
- telephone company, of, 556.

EXPLOSIVES. *See* DANGEROUS GOODS.

EXTENSION OF TIME. *See* COMMENCEMENT ; COMPLETION ; COMPULSORY PURCHASE OF LAND ; WORKS.

EXTENSIONS,

- of light railways, amending Orders for, 515.
- form of Order, 638.
- recital in Order as to, 548.
- when permitted by Commissioners after application made, 471, 472.
- of tramways, amending Orders for, 115.

•

FALSE IMPRISONMENT. *See* ARREST.

FARES. *See* TOLLS ; PASSENGERS ; PASSENGER TRAFFIC.

FEES. *See also* COSTS ; EXPENSES.

- application for light railway Order, on, to be fixed by Treasury on recommendation of Board of Trade, 500.
- fee at present payable, 535.
- application for tramway Order, on, fee at present payable, 331.
- Private Legislation Procedure (Scotland) Act, 1899, may be fixed under, 321.

FENCING,

- barbed wire forbidden on light railways, 483.
- on part laid on or near commons, 564.
- light railways, of, amending Orders as to, 516.
- cattle guards in lieu of fencing, 560.
- exemption from fencing, 560.
- statutory obligation modified, 483.
- works, of, during construction, 141, 594.

FERRIES,

- authorised in connection with a light railway, 483.

FORESHORE,

- access to be provided on construction of light railway, 483.
- deposit of documents, where light railway is intended to interfere with, 518.
- interference with, by light railway to be with consent of Board of Trade, 509.
- tidal waters to be coloured blue on plans, 328, 394, 528.

FRANCHISE. *See* PROMOTERS.

FREE GRANTS. *See* TREASURY.

FRONTAGERS. *See also* "NINE FEET SIX INCHES RULE."

- "abutting on," meaning of, 103.
- alteration of line after construction, to be shown on plan open to inspection of, 597.
- brackets and attachments, affixing of, to houses, 599, 600.

FRONTAGERS—*continued*.

locus standi of, 21, 404.

allegations necessary in petition, 28.

estoppel, no, by previous assents or appearance, 27.

extension of time Bills, against, 26, 38.

general grounds, not allowed on, 27.

general injury to street, in respect of, 27.

new works and mechanical power Bills, against, 26.

selected petitioners, grant of *locus* to, 28.

what premises, in respect of, 21.

when bare owners, 25.

when lessees, 25.

“nine feet six inches rule,” advertisements under, 325, 384.

consent and dissent under, 102, 103, 104, 105.

notices under, 327, 386.

objection to deviations, &c. which infringe, 430.

notices to. *See* NOTICES; STANDING ORDERS.

rails, double, single, &c. to be shown on plan open to inspection of, 596.

who is a frontager, 21, 103.

GAS, WATER, &c. COMPANIES,

breaking up of streets by, in spite of line, 154, 608.

expenses of, 607.

large water mains, protection for, 485.

locus standi of, 35.

model protective clause not necessarily a bar, 35.

protection afforded by Tramways Act, 1870, not necessarily a bar,
35, 152.

pipes and mains, alteration of, by promoters, 148, 151, 606.

protection of, against electrolysis, 361, 434, 435, 570,
571, 616.

protective clauses for, in light railway Orders, 494, 606.

superintendence by, of alteration of pipes and mains, 149, 606.

water company given further protection than under Railways Clauses
Consolidation Act, 1845., 480.

GAUGE,

alteration of, by amending tramway Order, 114.

by leave of Board of Trade, 427, 484, 591.

existing railway, repair of roads by light railway company on alteration
of gauge of, 560.

light railways of Class A., of, 483, 553.

of Class B., of, 484, 591.

notices and advertisements under Tramways Rules must specify, 325.

Provisional Order, prescribed by, 427.

Tramways Act, 1870, prescribed by, 132.

tramways, of, 132.

GENERAL ACTS, SAVING FOR. *See* INCORPORATION OF ACTS.**GENERAL ORDERS UNDER PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1890.** *See* SCOTLAND.**GENERATING STATIONS.** *See* ELECTRICITY AND ELECTRICAL APPARATUS.

GENERATORS. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

GOODS TRAFFIC. *See also* TOLLS.

On Tramways,

animals, rates for, 441, 446.

maximum rates chargeable under Provisional Order, 446.

provisions as to, in Provisional Order, 439, 441.

Regulation of Railways Act, 1868, under, 83.

small parcels, rates for, 446.

tramways, on, generally, 106.

On Light Railways,

animals, rates for, 618, 633.

by-laws to regulate traffic other than passenger traffic and heavy goods traffic, 617.

rates fixed by Order, 479, 490, 574, 618, 633.

may be for five years 25 per cent. higher than those on neighbouring railway, 574.

small parcels, for, 574, 634.

variations from usual rates authorised by certain Orders, 490.

special clauses in certain Orders, 486.

GRADIENTS,

on light railways, 483, 557.

GRANTS. *See* LOCAL AUTHORITIES; TREASURY.

GUARD WIRES. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

HACKNEY CARRIAGES,

by-laws for hackney carriages, application to tramcars of, 206.

confirmation of, 208.

enforcement of, 207.

licences, discretion to refuse, 208.

drivers may be required to apply personally for, 208.

local authority's tramcars require, 208.

mandamus to hear applications for, 208.

statutes governing, 204.

tramcars, drivers, &c. to be licensed as hackney carriages,

drivers, &c., 204, 206.

lights, by-laws as to, applied to tramcars, 207.

overcrowding, enforcement of by-laws as to, in case of tramcars, 206, 207.

HIGHWAYS,

by-laws for tramways, effect on Highway Acts, 196.

highway districts, present meaning of, 95, 96.

mechanical tramway or light railway on highway not subject to Locomotives on Highways Acts, 165.

works on highways, special duty of promoters in relation to, 230.

HISTORIC, &c. BUILDINGS AND PLACES,

protected by Light Railways Act, 1896..512, 513.

by Private Legislation Procedure (Scotland) Act, 1899..322.

HOLIDAYS. *See* SUNDAYS.

HOUSING OF THE WORKING CLASSES,

provisions as to re-housing in Tramways Orders Confirmation Act, 423.

in light railway Orders, 554, 592.

IMPROVEMENT OF LAND,

includes the making of tramways in England and Scotland, 86, 87, 89.

provisions as to, in Light Railways Act, 1896..505, 506.

in light railway Orders (Class A.), 550.

(Class B.), 587.

INCORPORATION OF ACTS. *See also* LANDS CLAUSES ACTS; CLAUSES ACTS.

express variation or exception, meaning of, 111.

general Acts to apply to light railways, 583, 622.

general railway Acts to apply to light railways, unless excepted, 88, 494, 495.

usual exceptions, 495, 551, 588.

general tramway Acts to apply to tramways, 446.

light railway Orders, in, 478, 480, 481, 493, 494, 495, 524, 550, 587.

Provisional Orders under Private Legislation Procedure (Scotland) Act, 1899, in, 421.

Tramways Act, 1870, Parts II. and III., incorporated in all Orders and Acts subject to express variation or exception, 125.

INDUCTION, ELECTRIC. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

INFRINGEMENT,

of patent for points and crossings, 134.

INQUIRIES. *See* LOCAL INQUIRIES.INSOLVENCY OF PROMOTERS. *See also* WINDING-UP.

In the case of Tramways,

Board of Trade may declare insolvency after inquiry, 172.

inquiry, injunction to restrain, 173.

local or road authority may make representation to Board of Trade as to, 172.

powers of promoters, on, effect of, 173.

purchase by local authority on, 173, 175.

removal of rails on, 173.

In the case of Light Railways,

Board of Trade may declare insolvency after inquiry, 622.

powers of company, on, effect of, 622.

purchase by local authorities on, 623.

removal of rails on, 622.

road authority may make representation to Board of Trade as to, 622.

INSULATION. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

IRELAND,

Light Railways Act, 1896, does not extend to, 522.

statutes governing tramways and light railways in, 91.

Tramways Act, 1870, does not extend to, 91.

tramways and light railways in, v. 2.

JOINT APPLICATIONS. *See* APPLICATIONS.

JUNCTIONS,

- compulsory junctions between light railways and existing railways, whether power to authorise, 513.
- existing railways, with, provisions of Light Railways Act, 1896, as to, 513. protective clauses for, 561.
- existing tramway, with, protective clauses for, 605.
- plans and sections must show, 530, 532.
- tramway promoters, power of, to make, 430.

JUSTICES,

- defined in Tramways Act, 1870..93, 95.

LABOURING CLASS. *See* HOUSING OF THE WORKING CLASSES; MASTER AND SERVANT; WORKMEN'S TICKETS AND TRAINS.LANDS. *See also* COMPULSORY PURCHASE OF LAND; MINES AND MINERALS.

- buildings, generating stations, &c. may be erected on, 425.
- common lands. *See* COMMONS.
- compensation for. *See* COMPENSATION; COMPULSORY PURCHASE OF LAND.
- compulsory purchase for tramways and light railways. *See* COMPULSORY PURCHASE OF LAND.
- contracts for purchase of, to be deposited with Board of Trade under Tramways Rules, 330.
- entry upon, by promoters. *See* ENTRY UPON LANDS.
- improvement of. *See* IMPROVEMENT OF LAND.
- lease of, by agreement for tramways, 425.
- light railways, provisions as to lands for, 479, 482, 483, 554, 592.
- local authority, appropriation of lands for line by, 425, 592.
- nuisance on lands acquired for tramway or light railway. *See* NUISANCE.
- purchase of, by agreement for tramways, 425.
- quantity of land authorised to be acquired by agreement, 425, 592.
- roadside wastes. *See* ROADSIDE WASTES.
- scenery and historical objects. *See* HISTORIC, &c. BUILDINGS AND PLACES.
- surplus land, sale of, under Provisional Order, 425.
- unauthorised user of land acquired under statutory powers, 227.
- widenings of roads, compulsory powers must be applied for, where required, 481.
- widenings of roads, special provisions for purchase of land by local authority at company's expense, 484.

LANDS CLAUSES ACTS,

- defined in Tramways Act, 1870..93, 94.
- incorporation of, in light railway Orders, 550, 587. in Provisional Orders, restricted, 101, 111, 112, 424.
- Scotland, defined in Light Railways Act, 1896, for, 520, 521.
- variation and application of, in arbitrations under Light Railways Act, 1896..498, 499, 500.
- variation of, permitted in light railway Orders, with what limitations, 478, 480, 554.
- Board of Trade must report to Parliament on such variation, 478, 480.

LANDOWNERS,

- abandonment of part of light railway, on, compensation to be paid to, 645.
- adjoining landowners, agreements of light railway company with, 565, 610.
- Board of Agriculture, conditions of sanction to grants of land or contributions, 506.
- consultation of, before application for light railway Order, 463.
- contributions by, for purpose of light railway with sanction of Board of Agriculture, 505, 506, 507, 508, 534.
- disability, persons under, payment of compensation to trustees for, 554.
- free grant of land with sanction of Board of Agriculture for light railway, 505, 534.
- Improvement of Land Act, 1864, landowner within the meaning of, 507.
- locus standi* of, 30.
 - grounds of allowance and refusal, 30.
 - in respect of various species of ownership, 30.
- notices to. *See* NOTICES.
- under Standing Orders, 386, 397, 415.

LEAKAGE OF ELECTRICITY. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

LEASES,

Of Tramways,

- accidents, liability of lessees for, 223.
- arrest by lessees and their servants, 214.
- beneficial assignee of lease granted a *locus* against a tramway Bill, 37.
- compulsory purchase, lease in lieu of, 554.
- local authorities. by, 118.
 - outside district, limited by Standing Orders, 412.
- locus standi* against Bills authorising, 34, 41, 42.
 - of lessees, 37, 41, 42, 44.
- notice and deposit of, by local authority, 277.
- obstruction of lessees, penalty for, 209.
- rateability in respect of, 53, 57.
- renewal of, by local authority, 118.
- stamp on, 119.
- taxes, &c., how to be borne under, 119.
- valid only where made under Tramways Act, 1870, s. 19..120.

Of Light Railways,

- county council, notice to, by district council of intention to lease railway, 493.
- general railway Acts, under, 496.
- provisions for, in Order. 480, 493, 627.

LEVEL CROSSINGS,

- amending light railway Orders, authorised by, 516.
- commons, on, to be provided according to requirements of local authority, 563.
- gates at level crossings, and level crossings without gates, 558, 559.
- gates may be required by Board of Trade, 558.
- light railways, of, over roads, 558, 559.
 - over railways or tramways, 19, 487, 517, 593.
- mechanical tramways, of, over railways, 19.

LEVEL CROSSINGS—*continued*.

- railway or tramway, of, interference with by light railway (Class B.), 593.
- removal of rails on discontinuance, 483.
- speed of trains at, 568.
- tramways, of, over railways or tramways, 136, 140.

LICENCES FOR TRAMWAY CARS AND DRIVERS. *See* HACKNEY CARRIAGES.

LICENCES TO USE TRAMWAYS,

- conditions under which licences may be granted, 166.
- grant of, under certain circumstances, by the Board of Trade, 165.
- licensees are not "promoters," 167.
- obstruction of licensees, penalty for, 209.
- passengers, account of, to be rendered by licensees under penalty, 168, 169.
- rateability in respect of, 54.
- tolls to be paid in respect of, 166, 167, 168, 169.

LIGHTS,

- by-laws as to, on tramways, 207.
- electric tramways and light railways, on, 365.
- engines on tramways and light railways, on, 353, 354.
- light railways, on, 487, 614.
- posts on metalled part of road, on, 600.
- tramways, on, lxxvi, 207.
- works during construction, on, 141, 594.

LIGHT RAILWAYS,

- abandonment of. *See* ABANDONMENT.
- accidents on. *See* ACCIDENTS; CONTRACTORS; ELECTRICITY AND ELECTRICAL APPARATUS; MASTER AND SERVANT.
- advances to. *See* LOCAL AUTHORITIES; TREASURY.
- advertisements displayed on. *See* ADVERTISEMENTS.
- amalgamation of. *See* WORKING AGREEMENTS.
- amending orders for. *See* AMENDING ORDERS.
- animal power on. *See* ANIMAL POWER.
- animal traffic on. *See* GOODS TRAFFIC.
- applications for Orders for. *See* APPLICATIONS.
- arbitrations in relation to. *See* ARBITRATION.
- arrest on. *See* ARREST.
- audit of accounts of. *See* AUDIT.
- bells on. *See* BELL.
- Bills for, petitions against. *See* LOCUS STANDI.
- procedure on promotion of. *See* STANDING ORDERS OF PARLIAMENT.
- Board of Trade, powers and practice of. *See* BOARD OF TRADE.
- by-laws as to. *See* BY-LAWS.
- carriages on. *See* CARRIAGES.
- classes of, 7, 451.
- Commissioners, powers and practice of. *See* LIGHT RAILWAY COMMISSIONERS.
- commons, on. *See* COMMONS.
- company. *See* LIGHT RAILWAY COMPANY.
- compensation to employes. *See* MASTER AND SERVANT.
- competition by. *See* COMPETITION.

LIGHT RAILWAYS—*continued.*

- completion of. *See* COMPLETION.
- compulsory purchase of. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.
- conductors. *See* CONDUCTORS OF CARRIAGES.
- contractors for. *See* CONTRACTORS.
- costs in connection with. *See* COSTS.
- county councils and. *See* COUNTY COUNCILS; LOCAL AUTHORITIES.
- Crown and. *See* CROWN.
- dangerous goods on. *See* DANGEROUS GOODS.
- definition of, 1, 5, 7.
- deviations of. *See* DEVIATIONS.
- discontinuance of. *See* DISCONTINUANCE.
- drivers. *See* DRIVERS OF CARRIAGES.
- electricity, use of, on. *See* ELECTRICITY AND ELECTRICAL APPARATUS.
- engines on. *See* ENGINES.
- existing line or powers, how far a bar to authorisation of a light railway, 452.
- existing railway may by Order be worked as a light railway, 504, 505.
- expenses in connection with. *See* COSTS; EXPENSES; FEES.
- extensions of. *See* EXTENSIONS.
- fares on. *See* TOLLS; PASSENGERS; PASSENGER TRAFFIC.
- fencing of. *See* FENCING.
- foreshore, on. *See* FORESHORE.
- free grants to. *See* TREASURY.
- frontagers and. *See* FRONTAGERS.
- gauge of. *See* GAUGE.
- general Acts, in, mention of, 5, 8.
- general railway Acts, application of, to, 88, 494, 495.
- goods traffic on. *See* GOODS TRAFFIC.
- history of, 5.
- hydraulic inclined railway sanctioned by the Commissioners, 451.
- improvement of land in England and Scotland includes the making of, 86, 87, 89, 505, 506.
- Ireland, in. *See* IRELAND.
- junctions of. *See* JUNCTIONS.
- lands for. *See* COMPULSORY PURCHASE OF LAND; LANDS.
- landowners and. *See* LANDOWNERS.
- leases of. *See* LEASES.
- level crossings. *See* LEVEL CROSSINGS.
- licences for, under Regulation of Railways Act, 1868..89.
- licences for carriages and drivers. *See* HACKNEY CARRIAGES.
- lights on. *See* LIGHTS.
- load, limits of. *See* LOAD.
- local authorities and. *See* LOCAL AUTHORITIES.
- local inquiries as to. *See* LOCAL INQUIRIES.
- locus standi* of, against tramway Bill, 20.
- London, in. *See* LONDON.
- mails on. *See* POSTMASTER-GENERAL.
- mechanical power on. *See* MECHANICAL POWER.
- mines under. *See* MINES AND MINERALS.
- mortgages of. *See* MORTGAGES.
- national defence and. *See* DEFENCE, NATIONAL.
- nuisances committed in connection with. *See* NUISANCE.
- obstruction of. *See* OBSTRUCTION.
- opening of. *See* OPENING.

LIGHT RAILWAYS—*continued*.

- Orders for. *See* LIGHT RAILWAY ORDERS.
- passenger traffic on. *See* PASSENGERS; PASSENGER TRAFFIC.
- passing of carriages and passing places on. *See* PASSING OF CARRIAGES.
- penalties in respect of. *See* PENALTIES.
- Postmaster-General and. *See* POSTMASTER-GENERAL.
- power to make, given by Orders, 553, 588.
- promotion, methods of, 9.
- promoters of. *See* LIGHT RAILWAY COMPANY; PROMOTERS.
- purchase of. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.
- rails, position, pattern, &c. of. *See* RAILS.
- railways and. *See* RAILWAYS.
- rates on. *See* TOLLS.
- rating of. *See* RATING.
- roads, light railways on, may be authorized by the Commissioners, 7, 451.
- roads, on. *See* ROADS.
- road authorities and. *See* ROAD AUTHORITIES.
- running powers. *See* RUNNING POWERS.
- Scotland, in, special provisions. *See* SCOTLAND.
- service of cars on, 610.
- sewers. *See* SEWERS.
- signals, provision as to, 584.
- snow on. *See* SNOW.
- speed, limits of. *See* SPEED.
- stage carriage Acts and. *See* STAGE CARRIAGE.
- stations. *See* STATIONS.
- statutory provisions relating to, miscellaneous, 87.
- stopping of carriages and engines. *See* STOPPING OF TRAMWAY AND LIGHT RAILWAY CARRIAGES AND ENGINES.
- Sunday traffic. *See* SUNDAYS.
- Telegraph Acts, applications of, to, 88, 517, 518.
- telegraph and telephone companies and. *See* TELEGRAPH AND TELEPHONE COMPANIES.
- temporary light railways, 612.
- time limited for construction, 479, 489, 556, 592.
- tobacco and snuff, sale of, on, 87.
- tolls on. *See* TOLLS.
- traffic on. *See* TRAFFIC.
- tramways and, 8, 451.
- tramway, purely urban, will not be authorised by the Commissioners, 451.
- working agreements. *See* WORKING AGREEMENTS.
- works of. *See* ELECTRICITY AND ELECTRICAL APPARATUS; WORKS.
- working agreements as to. *See* WORKING AGREEMENTS.
- workmen's tickets and trains on. *See* WORKMEN'S TICKETS AND TRAINS.

LIGHT RAILWAY BILLS. *See* STANDING ORDERS OF PARLIAMENT.

LIGHT RAILWAY COMMISSIONERS,

- amending Orders, powers as to, 514, 515.
- appeal of council from refusal to make Order, 464, 472.
- applications for light railway Orders to be received by, 453.
- applications, consideration of, by, 463.
- matters to which the Commissioners give weight, 469, 470.
- Board of Trade to be assisted by, in considering Orders, 472, 474.
- competing schemes, grounds of Commissioners' preference for either, 470.

LIGHT RAILWAY COMMISSIONERS—*continued*.

- competition, formerly would not hear objections on the ground of, 46.
- duties of, 450, 466, 527.
- electric energy, cannot confer power to supply, 456.
- establishment of, 449, 451.
- historical objects and scenery, duty as to, 512.
- hydraulic inclined railway, have authorised a, 451.
- jurisdiction, extent of, 7, 8, 450, 451, 452.
- local inquiries may be held by, 463. *And see* LOCAL INQUIRIES.
- objections to be made to and fully heard by, 464, 529.
- officials appointed to assist, 450.
- Order to be settled by, 464. *See also* LIGHT RAILWAY ORDERS.
- powers, duration of, 5, 450, 453.
- private road, cannot authorise light railway on, 452.
- quorum of, 450.
- report of, to be sent to Board of Trade with Order, 472, 473.
 - will not be shown to parties, 473.
- salaries of, 450, 526.
- tramway, may authorise a, 451.

LIGHT RAILWAY COMPANY. *See also* CAPITAL; PROMOTERS.

- audit and returns of accounts of, 479, 489, 631.
- definition of, 522.
- directors, clauses as to, 552.
 - qualification of, 488, 552.
 - to represent authorities who have made advances, 456, 479, 553.
- incorporation of, by Order, 454, 479, 488, 552.
 - even where promoters an existing company, 488.
- insolvency of. *See* INSOLVENCY OF PROMOTERS.
- local authority represented on managing body, where advance has been made, 456, 479, 553.
- meetings of directors and shareholders, 552.
- powers of, limited to districts in which works authorised by the Order, 465.
- quorum of directors and of shareholders, 552.
- user of road only acquired by, 591.
- winding-up of. *See* WINDING-UP.

LIGHT RAILWAY ORDERS.

- advantages and disadvantages of procedure by application for, 11.
- amending Orders. *See* AMENDING ORDERS.
- ancillary provisions may be inserted in, 479, 493.
- applications for. *See* APPLICATIONS.
- Board of Agriculture, consent of. *See* BOARD OF AGRICULTURE.
- Board of Trade, powers of, in relation to. *See* BOARD OF TRADE.
- clauses to be inserted in, 6, 464, 478, 480. *And see* CLAUSES.
- Commissioners, powers and duties of, as to. *See* LIGHT RAILWAY COMMISSIONERS.
 - Order of, only provisional till confirmed, 464.
- confirmation of. *See* BOARD OF TRADE.
 - equivalent to enactment by Parliament, 477, 478.
- contents of, 478, 480.
- costs of. *See* COSTS.
- Crown and. *See* CROWN.
- deferring of settlement by Commissioners, grounds for, 471.

LIGHT RAILWAY ORDERS—*continued*.

form of (Class A.), 548.

(Class B.), 586.

incorporation of Acts in. *See* INCORPORATION OF ACTS.

Lands Clauses Acts, incorporation of, in. *See* LANDS CLAUSES ACTS.

local inquiries for purpose of. *See* LOCAL INQUIRIES.

modification of, by Board of Trade, 474.

name of scheme, alteration of, in Order, 472.

Parliament, submission of Order to, by the Board of Trade, 474, 475.

grounds for, 474, 475.

private road, Order cannot be granted for light railway on, 452.

protective clauses in. *See* CLAUSES.

remitting of, to Commissioners by Board of Trade, 474, 477.

safety of public to be provided for in, 464.

to be ensured by Board of Trade, 474, 476.

tramway Orders and Acts, comparison of, with, 9.

variations from deposited plans, &c., permitted by Commissioners, 471.

consent of persons and bodies affected
essential, 471.

LOAD,

limits of, for light railways (Class A.), 5, 485, 567.

LOANS. *See* LOCAL AUTHORITIES; MORTGAGES; TREASURY.LOCAL AUTHORITIES. *See also* COUNTY COUNCILS; LONDON; ROADS;
ROAD AUTHORITIES; SCOTLAND; SEWERS AND SEWER AUTHORITIES.A. *In relation to Tramways.*

abandonment Orders, notice to be given to, of applications for, 326.
accounts of, 122.

applications for tramway Orders by, 95, 115.

must be approved by resolution, 96, 271.

proof of such approval, 324.

audit of accounts of. *See* AUDIT.

balance of tramway funds of, application of, 122.

borrowing, when authorised by Bill, Standing Order relating to,
413.

bridges and culverts belonging to. *See* BRIDGES AND CULVERTS.

by-laws made by. *See* BY-LAWS.

consent of, to applications for tramway Orders, 3, 95, 97.

proof of such consent, 325.

to Bills for tramways, 3, 97, 387.

to the making of junctions, sidings, cross-over roads, &c.,
430.

consent, future, agreement with promoter as to, 97.

consent of local authorities on two-thirds of route to Orders and
Bills, 98, 388.

when dispensed with, 3, 98.

definition of, in Tramways Act, 1870..92, 269.

deposits of documents with, under Tramways Act and Rules, 274,
329, 332.

under Standing Orders, 389.

differences of, with promoters. *See* ARBITRATION.

expenses of. *See also* EXPENSES.

how defrayed, 121, 123.

under what conditions sanctioned by the Board of Trade, 123.

LOCAL AUTHORITIES—*continued*.(A.) *In relation to Tramways—continued.*

expenses of—*continued*.

payable out of surplus of borough fund in a particular case, 186.

purchase-money, how payable, 177, 189, 190.

extension of time Orders, notice to be given to, of application for, 326.

inspection of engines and carriages by Board of Trade, may apply for, 353, 365, 370.

joint applications for Orders by, 115.

lands, appropriation, purchase and lease of, for tramway, 425.

leases by. *See* LEASES.

liability, protected from personal, 444.

under Public Authorities Protection Act, 1893..244.

licensing of carriages and drivers by. *See* HACKNEY CARRIAGES.

local rate may be extended by Board of Trade for payment of expenses of, 121, 124, 177, 189, 190.

locus standi of, 403.

allegations must be clear, 31.

consent dispensed with, no estoppel, 34.

consent of predecessors, no estoppel, 33.

extension of time, against, 33.

interference, in respect of, 32.

lease, in respect of power to, 34.

limited to their own district, 31.

mechanical power, against, 32.

pipes, &c., in respect of, 32.

purchase, in respect of power to, 34, 186.

roads and bridges, in respect of, 32.

running powers, in respect of, 34.

statutory power to veto excludes *locus*, 34.

London County Council. *See* LONDON.

military tramways, applications for Provisional Order for user of, 293.

purchase of, by Provisional Order, 294.

mortgages of local rate and tramways by. *See* MORTGAGES.

notices to, of applications for extension of time or abandonment Orders, 326.

public, may throw tramway open to, 118, 119.

Public Authorities Protection Act, 1893, application of, to, 244.

purchase by. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.

rates and charges, may apply for revision of, 441.

repayment of expenses of, periods of, 124.

representation by, that public is deprived of full use of tramway, 166.

sanitary purposes, use of tramway for, 440.

speed permitted by, must not be greater than that allowed by Board of Trade regulations, 434.

traffic, power to regulate, not affected by tramway, 263.

working of tramways by, 118, 120.

authorised by Provisional Order, 442.

locus standi against Bills authorising, 37, 41, 42.

B. *Powers under Private Legislation Procedure (Scotland) Act, 1899.*
319.

LOCAL AUTHORITIES—*continued.*C. *In relation to Light Railways.*

advances by, as loan or as part of share capital, for light railway,
454, 456, 489, 502, 549, 579, 635.

for line outside district, 455, 457, 549.

applications for Orders by, 6, 455, 504.

must be made in pursuance of a special resolution, 455, 457, 524.

audit of accounts of. *See* AUDIT.

borrowing by, for purpose of advances, 479, 501, 503, 579, 585,
635.

for purpose of construction, 479, 501, 503, 627, 635.

power to re-borrow, 629.

brackets and attachments in lieu of posts and standards may be
required by, 599.

bridges and culverts belonging to. *See* BRIDGES AND CULVERTS.

by-laws made by. *See* BY-LAWS.

consultation of, before application for Order, 463, 465.

councils, county, borough and district, may apply for Orders, 453.

deficiencies of income, how to be made up, 630.

deposit of documents, &c. with, on application for Order, 528.

differences of, with promoters. *See* ARBITRATION.

dividends, application of, 580.

electric energy, power to supply generally, not given by Order to,
456.

supply of, by local authorities to promoters, 486.

expenses of, how to be raised, paid and repaid, 501, 503.

may be made chargeable on certain parishes only, 501,
503.

inspection of engines and carriages by Board of Trade, may apply
for, 353, 365, 370.

joint applications for Orders by local authorities or local authorities
and individuals, 453, 454.

joint committees may be appointed for
the purpose, 504, 525.

joint construction, working or advances by, 454, 455.

lands, appropriation of, for light railway by, 592.

licensing of carriages and drivers by. *See* HACKNEY CARRIAGES.

opposition of, how far it has prevailed on applications for Orders,
6, 465.

where local authority have acquired or propose to
acquire similar powers, 452.

outside district, limitation on construction, advances, expenditure,
&c. by, 455, 457, 629.

posts, standards, and brackets, right to use for own purposes, 601.

powers which may be granted by Order to, 454, 456, 457.

profits, how to be applied where light railway worked by, 502.

how to be distributed, where advance made as part of share
capital, 479, 489, 579, 627, 635.

purchase by. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.

rates and charges, may represent to Board of Trade that revision is
necessary, 619.

receipts, application of, by, 630.

repaid advances, how to be dealt with by, 580.

repayment of borrowed moneys by sinking fund, 502, 579, 629, 635.
within what period, 504, 628.

representation on managing body of, 456, 479, 553.

LOCAL AUTHORITIES—*continued.*C. *In relation to Light Railways*—*continued.*

- roads, power to break up, &c., not taken away by Order, 608.
 - restrictions under which it may be exercised, 608.
- sewers and drains of, protection for, 564.
- sinking fund for repayment of moneys borrowed, provisions as to, 502, 579, 629, 635.
- subsidence of road, not liable to promoters for, 609.
- superintendence of light railway works by, special provisions in certain Orders, 484.
- traction, consent to method of, 484, 614.
- traffic, power to regulate, not to be affected by Order, 611.
- use of railway by, for certain purposes, 486, 611.
- votes of, as shareholders, 579.
- waiting rooms may in some cases be required by, 484.

LOCAL BILLS. *See* STANDING ORDERS OF PARLIAMENT.

LOCAL GOVERNMENT ACTS,

defined for Scotland in Light Railways Act, 1896., 521.

LOCAL INQUIRIES. *See also* APPLICATIONS.*Under Tramways Act, 1870.*

- injunction to restrain holding of, 173.
- insolvency of promoters, in case of alleged, 172.
- Provisional Order, on application for, 100.
 - objections which may be taken at such inquiry, 101.
- regulations governing, 264, 266.
- representation that public are deprived of full benefit of tramway, 166.

Under Light Railways Act, 1896,

- amending Orders, when held in respect of applications for, 515.
- applications for Orders, on,
 - Board of Trade may hold, 474.
 - provisions as to, expenses and procedure, 500, 501.
 - Commissioners may hold, 463.
 - objections which may be taken, 468.
 - procedure, 467.
- insolvency of company, on alleged, 622.
 - procedure, 632.
- rates and charges, on request for revision of, 620.
 - procedure, 632.

LOCAL RATE,

- defined for the purposes of Tramways Act, 1870., 92, 269.
- extended for payment of tramway expenses, 121, 124.
 - of purchase-money of tramways, 177, 189, 190.
- mortgage of, for payment of tramway expenses, 121.

LOCOMOTIVES ON HIGHWAYS ACTS,

- mechanical tramway or light railway not subject to, 165.

LOCUS STANDI. *See also* STANDING ORDERS OF PARLIAMENT.

- A. *Generally*,
 - competition, on ground of, 12, 37, 39, 42, 48, 403.
 - Examiners, before, 401, 402.
 - general principles of, 12.
 - petitions, amendment of verbal errors in, 29.
 - previous opposition before Board of Trade, &c. no bar, 19, 27.
 - Provisional Order Confirmation Bills equivalent to private Bills for this purpose, 12, 109, 110.
 - Standing Orders with regard to. *See* STANDING ORDERS OF PARLIAMENT.
- B. *Against Tramway Bills and Confirmation Bills*, 12, 109, 110.
 - cab proprietors, of, 37.
 - Chambers of Commerce, &c., of, 403.
 - county councils, of, 403, 404.
 - dissentient shareholders, of, 38, 402, 403.
 - Examiners, before, 401.
 - frontagers, of. *See* FRONTAGERS.
 - gas and water, &c. companies, of. *See* GAS AND WATER, &c. COMPANIES.
 - inhabitants, of. *See* RATEPAYERS.
 - landowners, of. *See* LANDOWNERS.
 - light railways, of, 20.
 - local authorities, of. *See* LOCAL AUTHORITIES.
 - omnibus proprietors, of, 36.
 - railways, of. *See* RAILWAYS.
 - telephone companies, of, 36.
 - temporary tramway, against, 39.
 - various owners and lessees, &c. affected, of, 37.
 - under Military Tramways Act, 1887, 292.
- C. *Of Tramways*, 39. *And see* TRAMWAYS.
- D. *Against applications for Light Railway Orders*, 45. *And see* APPLICATIONS; BOARD OF TRADE.
- E. *Against applications for Scots Provisional Orders*, 47. *And see* SCOTLAND.

LONDON,

- deposit of Bill with County Council on or before 21st December, 390.
- of documents, &c. with County Council, &c., 389.
- expenses of County Council in regard to tramways, how to be raised and paid, 124.
- licensing of tramears and drivers in, 205.
- local authorities for purposes of Tramways Act, 1870, who are, 269, 271.
- overhead wires, control of County Council over, 229.
- rating of tramways, 59, 64, 71.
- road authorities for purposes of Tramways Act, 1870, who are, 270, 273.
- traffic, Royal Commission on, 8.
- tramway in metropolis, Order for, refused by Light Railway Commissioners, 451.

LUGGAGE. *See* PASSENGERS; PASSENGER TRAFFIC.

MACHINERY. *See* PLANT AND MACHINERY.

MAILS. *See* POSTMASTER-GENERAL.

MAINS. *See* GAS, WATER, &C. COMPANIES.

MALICIOUS PROSECUTION. *See* ARREST.

MANAGER. *See* MORTGAGES.

MANDAMUS,

to local authority to hear application for licence for tramcars, 208.
to promoters to repair track, 175.

MASTER AND SERVANT. *See also* CONTRACTORS.

arrest by servant, liability of master for, 216.

in particular in the case of tramways, 217.

civil liability of promoters for servants, 242.

compensation to servants. *See* Employers' Liability Act, 1880, and
Workmen's Compensation Act, 1897, *infra*.

criminal liability of promoters for servants, 242.

Employers' Liability Act, 1880, whether tramway employes are within,
252.

light railway employes probably within,
253, 497.

liability of promoters and lessees to servants for accidents not enlarged
by Tramways Act, 1870..224.

negligence of servant, what constitutes, in the case of tramway and
omnibus accidents, 247.

ratification by master of arrest by servant, 219.

of other acts of servant, what constitutes, 244.

scope of employment generally, 242.

in the case of tramways and omnibuses, 246.

works, liability of promoters and lessees for accidents due to, 224.

Workmen's Compensation Act, 1897, only applies to tramways when
being constructed, altered or repaired, 254.

cases on the Act, in relation to tramways, 255.

light railways, applies to, 88, 497.

MECHANICAL POWER. *See also* ELECTRICITY AND ELECTRICAL AP-
PARATUS.

amending tramway Order authorising the use of, 114.

Board of Trade may inspect engines and carriages driven by, 353.

may make by-laws for the use of, on tramways, 433.

may make regulations for the use of, on tramways, 432.
on light railways,
569, 614.

cable traction, amending tramway Order authorising, 117.

regulations of Board of Trade for, 369.

carriages propelled by. *See* CARRIAGES.

cesser of use of, may be ordered by Board of Trade absolutely or on
conditions, 432, 570, 615.

injunction to restrain unauthorised use of, 165.

light railways, use of, on, (Class A.), 484, 554.

(Class B.), 484, 614.

licences to use mechanical tramways, 167.

locus standi against Bills to authorise use of, 15, 18, 26, 32, 35, 36, 37.

may be employed, if and as prescribed, 160, 161, 165, 432.

necessary buildings, &c. may be erected by local authority working
tramways, 442.

MECHANICAL POWER—*continued*.

- notices and advertisements must specify power proposed to be used, 325, 527.
- penalty for use contrary to regulations, 432.
- Provisional Order, effect of introduction of mechanical power on procedure by, 4.
- re-construction of tramways for purposes of, 425.
- regulations, authentication of, 444, 631.
 - military tramways, for, power to make, for use of steam or other mechanical power, 291.
 - model form of, for use of steam or other mechanical power, 352.
- smoke. *See* SMOKE.
- speed. *See* SPEED.
- steam power, use of, on light railways (Class A.), not subject to Board of Trade's regulations, 569.
 - (Class B.), subject to local and road authorities' consent, 614.
- steam tramway, accidents due to, 247, 248.
- works for purposes of mechanical power to be deemed to be works of a tramway, 433.

METROPOLIS. *See* LONDON.**MILITARY TRAMWAYS,**

- advertisement of Orders when made, 291.
- amendment of Orders for, 292.
- by-laws, power to make, 291.
- compulsory purchase of land for, 289.
- confirmation of Order, 292.
- injury or obstruction, penalties for, 290.
- Military Tramways Act, 1887..8, 287.
- penalties, how recoverable, 291.
- Provisional Order may be obtained by a Secretary of State, 287.
 - Orders which have been so obtained, 287.
- provisions which may be inserted in a military tramways Order, 288.
 - usual provisions, 289, 291, 293.
- rateable, when, 55 *seq.*
- regulations for mechanical power, power to make, 291.
- sale of, by Secretary of State, 294.
- use of tramways by local authorities and others, Provisional Orders for, 293.

MINES AND MINERALS,

- light railway (Class A.), questions as to minerals to be settled by arbitration under the Order, 551.
 - (Class B.) not to interfere with rights of working minerals or entitle promoters to compensation for damage, 591.
- road, damage to, by working minerals, the subject of compensation, 261.
- support, right to, at common law, 261.
- tramway not to interfere with rights of working minerals or entitle promoters to compensation for damage, 260.

MORTGAGES,*Of Tramways,*

- Board of Trade's consent not necessary under Provisional Order, 443.
- clause providing for event of purchase, 187.
- debenture-holders not entitled to a sale of the undertaking, 174.
- local authorities, by, to defray tramway expenses, 121.
- local rate, of, 121.
- mortgage may include rents, rates and charges derived from tramways, 443.
- mortgagees not entitled to sale or appointment of manager, but only to receiver, 174, 195.
- purchase, effect of, on, 187, 443.
- tramway and railway Bills, under, restricted by Standing Orders, 405.
- undertaking may be mortgaged by promoters, 192, 443.

Of Light Railways,

- borrowing powers in proportion to capital, 576.
- debenture stock for railway of Class A., 577.
 - may not be created for light railway of Class B., 488, 620.
- mortgages of railways of Class B. to comprise purchase-money and not to be a charge on undertaking when purchased, 620.
- receiver, appointment of, 577.

MOTIVE POWER. *See* ANIMAL POWER; ELECTRICITY AND ELECTRICAL APPARATUS; MECHANICAL POWER.

NATIONAL DEFENCE. *See* DEFENCE, NATIONAL.

NAVAL TRAMWAYS. *And see* MILITARY TRAMWAYS.

- Military Tramways Act, 1887, applies to, with substitution of Admiralty for Secretary of State, 296.
- Naval Works Act, 1899..8, 296.
- Provisional Order for, provisions of, 296.
- rateable, when, 55.

NEGLIGENCE. *See* ACCIDENTS; ELECTRICITY AND ELECTRICAL APPARATUS; MASTER AND SERVANT.

“NINE FEET SIX INCHES RULE.” *See also* FRONTAGERS.

- cross-over roads to be constructed where rule has not been observed, 430.
- to be observed where alteration of tramway made, 429.
 - where deviation, junction, siding, &c. made, 430.

NOTICES. *See also* LOCAL AUTHORITIES; ROAD AUTHORITIES.

- applications, of, for leave to bring in private and local Bills. *See* STANDING ORDERS OF PARLIAMENT.
 - for light railway Orders, 463, 466, 527, 528.
 - for prolongation of time for commencement or completion of tramways, 339.
 - for tramway Orders, 99, 100, 274, 325.
- bridge or culvert, of interference with, 135, 602.
- by-laws, of making of, 196, 278, 617.
- deposits, before repayment of, 298, 301.
- deviations from deposited plans and extensions of light railways, of, 471, 472.

NOTICES—*continued*.

- form and delivery of, 441, 532.
- landowners, to, of applications for light railway Orders, 464, 466, 532, 536.
 - failure to give such notices fatal, 466.
- lease of tramway by local authority, of, 118, 277.
- opening, before, 338, 566.
- pipes and mains, of alteration of, 148, 606.
- Private Legislation Procedure (Scotland) Act, 1899, under, 311, 417.
- proofs of advertisements and notices in case of tramways, 342.
 - light railways, 543.
- Provisional Order, of, when made, under Tramways Act, 1870..169, 276.
 - Military Tramways Act, 1887.. 291.
- roads, of breaking up, to be given to road authority by promoters, 134, 135, 138, 139, 593.
 - to promoters by local or road authority, 155, 157, 608.
- sewers, of interference with, 153, 154, 607.

NUISANCE,

- indictment for, 91, 137.
- land, on, acquired by agreement, 226, 233.
 - acquired under statutory powers, 226, 232.
- liability for nuisance preserved by tramway Orders, 425, 442.
 - by light railway Orders, 590, 592.
- poles and wires, in erecting, 228, 229.
- road, in breaking up, 137.
 - injunction to restrain such breaking up, 137.
- snow, in piling up, 234.
- statutory powers, how far a justification, 225, 226, 232, 234.
- timekeeper's box in highway, in erecting, 229.
- tramway, in laying down, without authority, 91.

OBJECTIONS AND OBJECTORS. *See* APPLICATIONS; BOARD OF TRADE;
LOCAL INQUIRIES; LOCUS STANDI; STANDING ORDERS OF PARLIAMENT.

OBSTRUCTION,

- by-law against, 376.
- promoters, lessees and licensees, of, penalty for, 209.
- servants of tramway promoters, of, by passengers, 379.
- tramway carriages, of, penalty for, 211.
- wilful, what constitutes, 211.

OMNIBUSES,

- licensing of, 206.
- locus standi* of proprietors of, 36.
 - against mechanical power Bills, 37.

OPENING,

- Of Tramways*,
 - conditions of, 132, 134.
 - deposit, release of, on, 337.
 - failure to open within time limited or extended, forfeiture of deposit on, 336.
 - penalty on, 107, 335.
 - injunction to restrain, 134.
 - notice to Board of Trade and accompanying documents before, 338.

OPENING—*continued.**Of Light Railways,*

conditions of, 566, 610.

deposit, release of, on, 581.

failure to open within time limited or extended, forfeiture of deposit
on, 582.penalty on, 491, 565,
610.

special provisions in certain Orders as to, 486, 487.

ORDERS. *See* LIGHT RAILWAY ORDERS; PROVISIONAL ORDERS UNDER TRAM-
WAYS ACT, 1870; SCOTLAND.

OVERCROWDING,

by-laws as to, nature and enforcement of, 206, 207.

OVERHEAD TROLLEY SYSTEM. *See* ELECTRICITY AND ELECTRICAL
APPARATUS.PARISH COUNCILS. *See also* LOCAL AUTHORITIES.

may apply for tramway Orders, 272.

may not apply for light railway Orders, 272, 453.

PASSENGERS. *See also* PASSENGER TRAFFIC; WORKMEN'S TICKETS AND
TRAINS.accidents to. *See* ACCIDENTS.arrest of. *See* ARREST.

damaging cars, &c., 377.

dirty and offensive, 377.

dogs not to be brought on to car by, 379.

electric circuit not to be accessible to, 365.

entrance and exit of, 354, 367, 370, 377, 434.

while car in motion, 379.

fare, refusal or neglect to pay, penalty for, 212, 378, 379.

decisions as to, 201, 212.

fraudulent intent, how far essential, 213.

fire-arms, loaded, not to be brought on to car by, 379.

intoxicated, not to be carried, 377.

luggage, where to be placed, 378.

machinery, protection from, 434, 615.

musical instruments, playing of, 377.

number of, licensed to be carried. to be exhibited, 160.

carrying in excess of, 378, 379.

obstruction of servants by, 379.

swearing, &c., 201, 377.

ticket to be shown by, 201, 378.

travelling otherwise than on seat or as a passenger, 378.

PASSENGER TRAFFIC. *See also* PASSENGERS; TOLLS.*On Tramways,*

bicycles and tricycles, rates for the carriage of, 447.

fares chargeable by promoters, 440.

list of, to be exhibited inside and outside carriages, 193, 194.

luggage, amount to be carried free of charge, 440.

Provisional Order, in. provisions as to, 439.

Sundays and holidays, fares not to be raised on, 440.

PASSENGER TRAFFIC—*continued*.*On Light Railways,*

- bicycles and tricycles, rates for the carriage of, 574, 634.
- fares to be taken fixed by Order, 479, 490, 575, 618, 633.
 - list of, to be exhibited inside carriages, 618.
 - various, authorised by various Orders, 490.
- luggage, amount to be carried free of charge, 575, 618.
- Passenger Duty Acts do not apply, 494, 498.
- special provisions in certain Orders as to passenger traffic, 486.
- special trains, 575.
- Sundays and holidays, fares not to be raised on, 618.

PASSING,

- passing places, construction of, on tramways, 430.
 - on light railways (Class B.), 590.
- prohibited at certain points, 365.

PATENTS,

- infringement of, for points and crossings, 134.
- light railway promoters may hold and use, 444.

PENALTIES,

- action, right of, in addition to penalties, 142, 152, 209.
- application of, 256, 257.
- by-laws may impose, 203, 617.
 - penalties for breach of, 355, 367, 370, 376, 379, 434.
- damages, in addition to penalty, when recoverable, 209.
 - in lieu of penalty, when recoverable, 257.
- dangerous goods, for bringing on tramways, 219.
- deposits, in lieu of. *See* DEPOSITS.
- distress on tramway for, 145, 257.
- electrical regulations and by-laws, for non-compliance with, 367.
- fare, for refusal or neglect to pay, 212.
- gas or water supply, for interruption of, 437, 573, 607.
- injunctions in lieu of or in addition to, 258.
- interest of persons suing for, 258.
- irregular imposition of, 257.
- licensees of tramways, on, for non-delivery of account of passengers, 168.
- light railway Orders, under, 583, 633.
- mandamus in lieu of, 145.
- mechanical power, for breach of regulations and by-laws as to, 354, 355, 367, 370, 432, 570.
- obstruction, for, of promoters, 209.
 - of tramway carriages, 211.
- rails, for non-repair of, 428, 599.
- recovery of, under by-laws, 203.
 - under light railway Orders, 583, 633.
 - under Military Tramways Act, 1887..291.
 - under Tramways Act, 1870, and by-laws made thereunder, 256.
 - under tramways Orders, 444.
 - method enacted by Act or Order must be employed, 258.
 - Scotland, in, 256, 258.
- road, for non-reinstatement, &c. of, 141.
 - for non-repair, &c. of, 143, 145.
- service of cars, for insufficient, 610.

PENALTIES—*continued*.

- telegraphic communication, for interruption of, 150, 152, 607.
- ticket, for refusal to show, &c., 213.
- tramways, for unauthorised use of carriages on, 222, 610.
- winding-up, in, action for penalties restrained, 257.
- workmen's cars, for non-provision of, 441, 619.

PETITIONS AGAINST BILLS AND ORDERS. *See* LOCUS STANDI ;
STANDING ORDERS OF PARLIAMENT.**PETITIONS FOR PROVISIONAL ORDERS IN SCOTLAND.** *See*
SCOTLAND.**PIPES.** *See* GAS, WATER, &c. COMPANIES : LOCAL AUTHORITIES ; SEWERS
AND SEWER AUTHORITIES.**PLANS AND SECTIONS.** *See also* DEPOSIT OF DOCUMENTS, &c. : STANDING
ORDERS OF PARLIAMENT.
how far part of an Act, 127.**PLANT AND MACHINERY,**
horses on tramways are "plant," 181.
"plant" for the purpose of compulsory purchase of tramways, 176, 181.
rateability of, 57.**PLATFORMS.** *See* STATIONS.**POINTS,**
catch-points on cable tramways, 370.**POLES.** *See* ELECTRICITY AND ELECTRICAL APPARATUS.**POLICE.** *See also* TRAFFIC.
conveyance of, 496.
regulation of traffic by, not to be affected by tramway or light railway,
263, 611.**POSTS.** *See* ELECTRICITY AND ELECTRICAL APPARATUS.**POSTMASTER-GENERAL.** *See also* TELEGRAPHS AND TELEPHONES.
Conveyance of Mails Act, 1893..304, 497.
to what it applies, 309.
deposits with, on application for light railway Order, 528.
light railways, conveyance of mails on, under general railway Acts, 496.
protection for, under light railway Orders, 569, 571, 618.
under Military Tramways Act, 1887..290.
under tramway Orders, 436.
Railway Commission, proceedings of, under Conveyance of Mails Act,
1893..304, 306, 307.
remuneration for carriage of mails, differences as to, how determined,
in case of railways, 304.
in case of tramways, 306.
tramroad, definition of, in Conveyance of Mails Act, 1893..308.
to be deemed a railway for the purpose of conveyance of mails,
307.
tramway, definition of, in Conveyance of Mails Act, 1893..308.
Postmaster-General may require conveyance of mails on, under
what conditions, 106, 305, 306.

POWERS. *See* STATUTORY POWERS.

PRELIMINARY EXPENSES. *See* EXPENSES; PROMOTERS.

PRIVATE BILLS. *See* STANDING ORDERS OF PARLIAMENT.

PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899.
See SCOTLAND.

PRIZE FIGHT,
special cars, &c. for, 83.

PROFITS. *See also* CAPITAL.
dividends only to be paid when maintenance has been provided for, 188.
purchase-money for tramways, when may be divided as profits, 188.

PROLONGATION OF TIME. *See* COMMENCEMENT; COMPLETION;
COMPULSORY PURCHASE OF LAND.

PROMOTERS. *See also* LIGHT RAILWAY COMPANY; STATUTORY POWERS.
accidents, liability of, in respect of. *See* ACCIDENTS; CONTRACTORS;
MASTER AND SERVANT.
agents for intended company, how far, 129.
arrangements made with, enforcement of,
if embodied in Act, 126, 129.
if not embodied in Act, 127.
by-laws made by, form of, 377.
company, if a, to deposit certain documents with the Board of Trade
under Tramways Rules, 330. *See also* DIRECTORS; WHARNCLIFFE
MEETING.
contractors, liability of, as against. *See* CONTRACTORS.
defined in Tramways Act, 1870..96, 126, 131.
duty of, in relation to works, 230 *seq.*
expenses of, 130, 131.
general Acts, application of, to, 446, 583, 632.
insolvency of. *See* INSOLVENCY OF PROMOTERS.
light railway promoters, incorporation by Order of, 454, 479, 488, 532.
powers of, limited to district in which works
authorised, 465.
monopoly of, extent of, 160, 162, 610.
obstruction of, penalty for, 209.
preliminary expenses and services, enforcement of arrangements for
payment of, 129.
whether to be paid by promoters or
company, 129.
profits of, 129, 130, 131.
ratification by company of arrangements made with promoters, 127.
rights of, extent of, 184, 259, 264, 591.

PROOFS OF COMPLIANCE,
with Light Railways Act and Rules, 543.
with Tramways Act and Rules as to applications, 332, 342.
as to deposit and advertisement of Provisional Order as made,
333, 350.

PROTECTIVE CLAUSES. *See* CLAUSES.

PROVISIONAL ORDERS UNDER PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899. *See* SCOTLAND.

PROVISIONAL ORDERS UNDER TRAMWAYS ACT, 1870,

advantages and disadvantages of procedure by, 2, 3, 9.

advertisements on applications for. *See* NOTICES.

amending Orders, matters authorised by, 114.

procedure as to, 114.

applications for. *See* APPLICATIONS.

compulsory powers to purchase land may not be granted by, 101, 111, 112.

confirmation of. *See* CONFIRMATION.

consents to applications for. *See* FRONTAGERS; LOCAL AUTHORITIES.

contents and form of, 101.

deposits on applications for. *See* DEPOSITS.

deposit of documents on applications for. *See* DEPOSIT OF DOCUMENTS, &c.

draft order, contents and form of, 331.

local rate extended by, 177.

military tramways, for, 287 *sqq.* *And see* MILITARY TRAMWAYS.

model form of, 424.

notices on applications for. *See* NOTICES.

petitions against Confirmation Bills. *See* LOCUS STANDI.

Private Legislation Procedure (Scotland) Act, 1899, does not affect the power to make, 322.

traffic, nature of, and tolls and charges to be taken in respect of, to be specified in Order, 106.

PUBLIC,

rights of, over tracks of tramway and light railway (Class B.), 264, 291.

tramways may be thrown open to, by local authority, 118, 119.

PUBLIC AUTHORITIES PROTECTION ACT, 1893,

how far applicable to promoters, whether local authorities or not, 244.

PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.

A. *Compulsory Purchase.*

(a) *Under Tramways Act, 1870, s. 43.*

conditions, &c. of purchase, 175.

discontinuance, on, 170, 175.

insolvency of promoters, on, 173, 175.

items which have to be purchased, 176, 181, 184.

light railway, agreements for running powers or working agreements with, not to affect power of purchase, 612, 613.

local authority, protection of, by Standing Orders, where another local authority makes or works tramway in their district, 412.

locus standi against Bills authorising, 34, 41, 42, 186.

mortgages of tramway, effect on, 187, 443.

"plant," &c. to be purchased, 176, 181.

possession, taking of, restrained till payment of purchase-money, 187.

private Acts, effect of, on sect. 43., 185.

purchase-money, division of, as profits. *See* PROFITS.

resolution to purchase, how to be passed, 176, 189.

PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS—*continued*.A. *Compulsory Purchase*—*continued*.

- (a) *Under Tramways Act, 1870, s. 43*—*continued*.
 - stamp on conveyance, 187.
 - terms of purchase, 4, 175, 181, 188.
 - variation of, by Act or Order, 10, 189, 442.
 - by amending Order, 114.
 - time of purchase, 4, 175, 178.
 - undertakings, purchase of separate. *See* UNDERTAKING.
 - vesting of powers in purchasing authority, 176, 182, 187.
- (b) *Under Tramways (Scotland) Act, 1861*. .286.
- (c) *Under Light Railways Act, 1896, and Light Railway Orders*.
 - alternative purchase by different local authorities, 491, 492.
 - amending Order may not confer power of compulsory purchase, 514.
 - county council, provisions as to purchase by, 625, 626.
 - purchase by, of district council's railway, 492, 625.
 - discontinuance, purchase on, 623.
 - district, railway outside, conditions on which local authority may purchase, 624.
 - insolvency of company, purchase on, 623.
 - joint purchase, provisions for, 491.
 - light railway (Class A.), compulsory purchase hitherto not provided for, 491.
 - Order may provide for compulsory purchase by local authorities, 7, 479, 491, 623, 624.
 - powers of company, effect of purchase on, 626.
 - purchase by local authorities, provisions affecting, 625.
 - purchase-money, period of repayment, 493, 625.
 - purchasing authorities, various, 491, 623.
 - terms of purchase, various, 492, 624.
 - times of purchase, various, 492, 624.

B. *Purchase by Agreement*.

- amending tramway Order dispensing with Tramways Act, 1870, s. 44. .114.
- conditions, time and results of purchase under Tramways Act, 1870, s. 44. .190.
- general railway Acts, under, 496.
- light railways, of, provisions for, in Order, 479, 492, 625, 626.
- various provisions in certain Orders, 492.
- locus standi* against Bills authorising, 34.
- military tramways, of, 294.
- parliamentary line, Commissioners refuse to make Order authorising sale of, 493.
- purchase-money and expenses under sect. 44 of Tramways Act, 1870, how to be raised and paid, 190.
- private tramway, purchase of, authorised by light railway Order, 493.
- railway company, option to purchase light railway given to, 492.
- resolution of local authority to purchase under Tramways Act, 1870, s. 44, how to be passed, 190.
- restrained, where meeting of shareholders of selling company not duly convened, 192.
- undertakings, of separate. *See* UNDERTAKING.

RAILS,

- amending Orders as to, 516.
- accidents due to rails. *See* ACCIDENTS.
- Board of Trade are to approve, 428, 598.
 - requirements of, on application for approval of rail and substructure of tramway, 340.
- checkrail to be provided on certain curves, 584.
- clearance, Board of Trade memorandum as to, 341.
- double, single lines, &c. to be approved by road authority, 429, 596.
 - to be shown on plan open to inspection of frontagers, 593.
- groove not to exceed one inch in width, 341.
- light railways, on, pattern of, 584, 598.
 - weight of, 482, 567, 584.
- load according to weight of rails, 485.
- patent for, infringement of, 137.
- repair, road authority or ratepayers may represent that promoters have failed to, 428, 599.
 - penalty for failure to, 428, 599.
- road, to be level with surface of, 132, 133, 598.
- sleepers, modes of attachment of rails to, 584.
- space between rails and between kerb and rails, 341.
- tramways, on, pattern of, 133.
 - weight of, 341.

RAILWAYS,

- by-laws, matters concerning, applicable to tramways, 202, 203.
- crossings of, on the level, by electric tramways, 19.
 - by light railways (Class B.), 593.
 - by tramways generally, 136.
 - to be shown on plans under Tramways Rules, 328.
- junctions of light railways with, 513, 561, 562.
- liability of, for accident to tramway at level crossing, 237.
- light railway, not to affect power of railway company to alter, &c. works, 591.
 - Orders authorising working of existing railway as, 504, 505, 553.
 - amending, authorising such working, 516.
- locus standi* of, against tramway Bills,
 - (a) on the ground of competition against Bills for horse tramways, 13.
 - for mechanical tramways, 15.
 - (b) on the ground of physical interference by construction, 17, 18.
 - by electrification, 18.
 - (c) as frontagers, 21, 26.
- notices to, under Tramways Rules, 326.
 - Light Railways Rules, 532.
- nuisance due to, how far justified by statutory powers, 237.
- option to purchase light railway given to, 492.
- powers granted to, by light railway Orders, 479, 487.
- private mineral line, clause for protection of, 497.
- protective clauses for, in light railway Orders, 497, 561, 565, 604.
- running powers of, over light railway. *See* RUNNING POWERS.
- subscriptions to light railways by, 488, 576.

RAILWAYS—*continued*.

- tramways not to affect power of railway company to alter, &c. works. 262.
- working agreements of, with light railway companies. *See* WORKING AGREEMENTS.

RATEPAYERS,

- locus standi* of, as inhabitants, 29, 403.
 - area for which granted, 29.
 - grounds on which refused, 30.
 - representative character of petitioners essential, 30.
- representations may be made by,
 - that public is deprived of full benefit of tramway, 166.
 - that rails are not kept in repair by promoters, 428, 599.
 - that rates and charges need revision, 441, 619.

RATES. *See* RATING; TAXES AND RATES; TOLLS.

RATING,

- A. *Of Light Railways*,
 - Scotland, in, 521, 522.
 - when Treasury has made an advance, 460, 461, 580.
 - Class A., 49.
 - under general railway Acts, 497.
 - Class B., 49, 50. *And see* *infra*.
 - Public Health Act, 1875, whether to be assessed at one-fourth under, 76.
- B. *Of Tramways and Light Railways (Class B.)*,
 - accidents, sum provided to meet, to be deducted, 68.
 - advertisements, receipts from, 65, 66.
 - assessment, 58.
 - auditors' fees to be deducted, 68.
 - "beneficial occupation" meaning of, 54.
 - brackets, rateability of, 56.
 - cartage and delivery charges, 65.
 - "contributive value," 77.
 - date at which receipts must be reckoned, 64.
 - deductions from gross receipts, 66.
 - for parochial rating, 73.
 - depreciation to be deducted, 67.
 - of leaseholds not to be deducted, 71.
 - difficulty of the subject, 63.
 - directors' fees to be deducted, 68.
 - gross receipts, ascertainment of, 64.
 - "hypothetical tenant," meaning of, 60.
 - income tax not to be deducted, 72.
 - indirectly productive portions of system, 73.
 - insurance, costs of, to be deducted, 68.
 - law charges to be deducted, 68.
 - leases, rateability in respect of, 53, 57.
 - local authority working tramways rateable, 55.
 - London, in, 59, 67, 71.
 - machinery, rating of, 57.
 - maintenance and repair, cost of, to be deducted, 66, 67.
 - method of receipts and deductions must be employed, 63.

RATING—*continued*.B. *Of Tramways and Light Railways (Class B.)*—*continued*.

- mileage division, rendered necessary by nature of tramways, 79.
 - three methods of carrying it out, their advantages and disadvantages, 79.
- mileage principle, as opposed to parochial principle, not to be applied to tramways, 82.
- military tramways, rateability of, 55.
- naval tramways, rateability of, 55.
- occupation, "beneficial," meaning of, 57.
 - of tramways, nature of, 50, 56.
 - price paid for, not to be deducted, 72.
- parochial principle, application of, to tramways, 63, 75, 77.
- plant and machinery, rating of, 57.
- plant, indirectly productive, how assessed, 77, 75.
- posts, rateability of, 56, 57.
- power-houses, &c. to be assessed in particular parish, 57.
- profits, how far a criterion of value, 61.
 - arising in a particular parish, 75.
- Public Health Act, 1875, tramway not assessed at one-fourth under, 75.
- purchase, depreciation due to approaching, not to be deducted, 72.
- rateability of, 50.
- rates, taxes, &c. to be deducted, 68, 75.
- receipts and deductions, method of, must be employed, 63.
- receipts, up to what date to be calculated, and ascertainment of, 67.
- rent, how far a criterion of value, 60.
- rent paid, to be deducted, 67.
- rents, receipts from, 65.
- repair and maintenance, deduction of cost of, 66.
- running powers, whether they make their possessor rateable, 52.
- running powers, receipts for, 60, 65.
- Scotland, tramways rateable in, 51.
 - valuation in, 63.
- stables, &c., to be assessed in particular parish, 77.
- stations, rated in particular parish, 75.
 - how assessed, 75.
- structural value, interest on, as a criterion of value, 62.
- taxes, &c. to be deducted, 68.
- tenant's capital, interest on, to be deducted, 70.
- tenant's profits to be deducted, 69.
- terminal charges, 65.
- tolls paid for through passengers, to be deducted, 68.
- trade profits, how far rateable, 62.
- undertakings, rating of separate, 67.
- valuation in Scotland, 63.
- value, how arrived at for rating purposes, 58.
- wires, rateability of, 56.
- working expenses to be deducted, 67.
- works, what, are rateable, 56.

RECEIVER. *See* MORTGAGES.

REFEREE. *See also* ARBITRATION.

powers of Board of Trade referee under Tramways Act, 1870, .265.

REGULATIONS FOR TRAMWAYS AND LIGHT RAILWAYS. *See*
BY-LAWS; BOARD OF TRADE; ELECTRICITY AND ELECTRICAL APPARATUS;
MECHANICAL POWER.

REPAIRS. *See* RAILS; ROADS.

REVENUE. *See* PROFITS; STAMPS.

ROADS. *See also* LIGHT RAILWAYS; LOCAL AUTHORITIES; ROAD AUTHO-
RITIES; STREETS; TRAMWAYS.
alteration, widening, improvement, &c. of, not to be affected by tramway
or light railway, 262, 591.
breaking up of, by tramway and light railway promoters, 134, 592.
bridges, construction of, for light railway, 557.
 repair of, by light railway company, 560.
cleansing, watering, &c. of, how far tramway promoters responsible for,
 144.
compensation for use of, not enforced by Light Railway Commissioners,
 481.
definition of, in Tramways Act, 1870..92, 93, 136.
diversion of, for purposes of light railway, 559.
footways, not included in, for purposes of Tramways Act, 1870..93, 136.
inclination of, power to alter for purposes of light railway, 557.
level, alterations of, for purposes of light railway, 595.
 level of tramway or light railway to be altered ac-
 cordingly, 429, 598.
level crossings over. *See* LEVEL CROSSINGS.
locus standi of local and road authorities in respect of, 33.
material, power of road authority to prescribe, 144.
 to order alteration of, 144.
 property of road authority in, 144, 171, 172.
 what, to be used in repairing track of tramway or light rail-
 way, 142, 484, 595, 596.
material, surplus, application of, 141, 431, 594.
 removal of, 141, 143, 594, 596.
paving, special provisions as to, in certain Orders, 484.
public rights over, how far affected by tramways or light railways, 264,
 591.
reinstatement of, after construction, 140, 142, 594.
 on abandonment, 142, 596.
repair of, by light railway company (Class A.), 560.
repair of part occupied by tramway or light railway (Class B.) and
 eighteen inches on each side, 142, 143, 595.
 contracts for such repair between promoters and road authority, 146,
 147, 599.
rights of promoters over, nature of, 259, 591.
subsidence, local or road authority not responsible to light railway com-
 pany for, 609.
surface and not only substructure to be kept in repair by promoters,
 145.
snow on. *See* SNOW.
traffic on. *See* TRAFFIC.
watching and fencing of, when broken up by promoters, 141, 594.
widening of, for purposes of light railway, 481, 516, 588.

ROAD AUTHORITIES. *See also* LOCAL AUTHORITIES ; ROADS.

- A. *In relation to Tramways,*
accidents, liability for, where contract for repair of road made with promoters, 146, 147.
agreements with promoters as to construction, repair, &c. of tramways, power to make, 443.
altering, &c. roads, powers of, not affected by tramway, 262.
applications for tramway Orders by, 95.
breaking up of roads, control over, of, 134, 139, 140, 427.
power of, how far affected by tramway, 154.
consent of, dispensed with under "two-thirds rule," 98, 388.
consent of, required to alteration of tramways, 429.
to junctions, sidings, cross-over roads, &c., 430.
to temporary tramways, 431.
to tramway Bills, 387.
to tramway Orders, where distinct from local authority, 96.
definition of, in Tramways Act, 1870.. 92, 94, 270, 273.
deposit may be applied to compensate, on abandonment, &c., 298, 300.
locus standi of. *See also* LOCAL AUTHORITIES.
when consent has been dispensed with, 158.
London, in, defined by Tramways Act, 1870.. 270, 273.
material of roads, powers in relation to. *See* ROADS.
notices to. *See also* NOTICES.
before breaking up roads, 134, 138.
of applications for extension of time and abandonment Orders, 326.
of applications for approval of rails and substructure, 340.
rails, notice to, of application for approval of, 340.
representation by, that promoters do not repair, 428.
removal of tramways by, on discontinuance, 171, 172.
on insolvency of promoters, 173.
repair of track, power to contract with promoters for, 146, 147.
power to control promoters in respect of, 142, 143, 145.
repair *ratione tenuræ* or *clausuræ* constitutes a "road authority," 93.
sanitary purposes, use of tramways for, 440.
stopping traffic on tramways, injunction to restrain from, 145.
temporary tramways, power to require, 431.
traffic, power to regulate, not affected by tramway, 263.
- B. *In relation to Light Railways,*
alteration of lines after construction, to be approved by, 597.
breaking up, &c. roads, by light railway company, control over, 592.
power of, not taken away by light railway Order, 608.
under what conditions it may be exercised, 608.
by-laws may be made by, 487, 617.
construction, method of, to be approved by, 594, 596.
consultation of, before application for light railway Order, 463, 465.
crossings, passing places, junctions, &c., to be approved by, 590.
material of roads, powers in relation to. *See* ROADS.
notices to, on application for light railway Orders, 532.
posts, standards and brackets, control over erection of, 599.
may require alteration of, 600, 601.

ROAD AUTHORITIES—*continued*.B. *In relation to Light Railways*—*continued*.

- removal of railway by, on discontinuance or insolvency of company, 621, 622.
- reinstatement of road to be done to satisfaction of, 594.
- repair, &c. of roads by light railway company (Class A.), differences with road authority to be settled by arbitration under the Order, 560.
- repair of part of road where light railway is laid, 595.
 - contracts for such repair between road authority and company, 599.
- subsidence of road, not liable to company for, 609.
- superintendence of light railway works by, 484.
- temporary light railways, may require, 612.
- traction, consent to method of, on light railways (Class B.), 484, 614.
- traffic, power to regulate, not affected by light railway, 611.
- widening of roads by light railway company, control over, 589.

ROAD TRUSTEES,

- extinct, 189.
- powers of, under Tramways (Scotland) Act, 1861..280, 281, 283, 285, 286.
- purchase of tramways by, 177, 189.

ROADSIDE WASTES,

- amending Orders for light railways on, 516.
- compensation for use of, not inserted in Order by Commissioners, 481.
- construction of light railways on, provisions as to, 482, 597.
- telegraph wires on, 618.

RULE OF THE ROAD. *See* TRAFFIC.

RULES,

- Board of Trade may make, under Light Railways Act, 1896..498, 500.
 - under Tramways Act, 1870..267.
- interpretation of, 268.
- Light Railways Rules, 1898..527.
- Light Railways (Costs) Rules, 1898..538.
- Light Railways (Costs) (Scotland) Rules, 1898..538.
- Rules Publication Act, 1893..268.
- Tramways Rules at present in force, 324.

RUNNING POWERS. *See also* WORKING AGREEMENTS.

- light railway (Class A.), clauses as to running powers over other railways, 568.
 - compulsory running powers over, refused by Commissioners, 488.
- light railway (Class B.), clauses as to running powers over tramways, 612.
- local authorities empowered to work tramways may be empowered by the Committee to make agreements for running powers, 412.
 - conditions and expenses of such agreements, 413.
- purchase, power of compulsory, not to be affected by agreements for, 612.
- rateability in respect of, 52.
- receipts for, form part of gross receipts for rating purposes, 65.

SALE OF TRAMWAYS AND LIGHT RAILWAYS. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.

SANITARY AUTHORITIES. *See* SEWERS.

SCENERY. *See* HISTORIC, &c. BUILDINGS AND PLACES.

SCOTLAND,

action by individual on behalf of public in, 227.

A. *Tramways (Scotland) Act*, 1861..279.

criticism of, 2, 279.

removal of tramways and power to purchase on removal, 285, 286.

road trustees, powers, &c. of. *See* ROAD TRUSTEES.

statute labour roads, provision for formation of tramways on, 283.

turnpike roads, provisions for formation of tramways on, 280.

B. *Tramways Act*, 1870.

application for Order by local authority, method of approval by resolution, 96, 271, 272.

arbitrations by Board of Trade or their nominee, provisions as to, 445.

licensing of tramears and drivers in, 205.

local authorities for purposes of Act in, who are, 270, 272, 273.

notices, form and delivery of, 445.

penalties, recovery of, 256, 258, 444.

Provisional Order, procedure by, preserved by Private Legislation Procedure (Scotland) Act, 1899..98, 322.

rateability of tramways in, 51.

tenant's profits, how estimated for rating purposes in, 50.

C. *Private Legislation Procedure (Scotland) Act*, 1899..8, 9, 310.

application, how to be made, 310, 417, 418.

Bills, when necessary in lieu of Provisional Orders, 311, 312.

reports of Chairmen to that effect, 311.

Board of Trade's powers to make Provisional Orders preserved, 322.

Commissioners, appointment of, 313, 314.

inquiry, shall hold, 312, 315.

powers of, as to evidence, &c., 319.

procedure before, 47.

confirmation and issue of opposed Order, 317.

of unopposed Order, 316.

Confirmation Bills, procedure on, 47, 318.

costs of proceedings on, 318.

deposits, Parliamentary Deposits Act, 1846, as modified, to apply to, 422.

deposit of documents, &c., 310, 311, 316, 317, 414, 415, 417, 418, 422.

Parliamentary Documents Deposit Act, 1837, to apply to, 422.

dissenting proprietors or members may be heard before Examiners, 419.

Examiners, assignment of, 220.

dissenting proprietors or members may be heard before, 419.

modified draft Orders to be referred to, 419.

proceedings in relation to, 419.

expenses under Act, payment of, 321.

fees may be fixed by General Orders with consent of Treasury, 321.

General Orders under Act, power to make, 321.

at present in force, 417.

SCOTLAND—*continued*.C. *Private Legislation Procedure (Scotland) Act*, 1899—*continued*.

General Orders, non-compliance with, memorials complaining of, 419.
dispensation from compliance with, 420.

historic, &c. buildings and places and scenery, protection of, 322.

local authorities, powers of, 319.

locus standi on applications for Orders, 47, 315, 316.

competition, on ground of, 48.

petitions, time and mode of presenting, 48, 420.

notices by advertisement, 311, 417.

as to substituted Bill, 414.

officials, appointment of, 320.

Provisional Orders to be applied for in lieu of procedure by private
Bill, 8, 9, 310.

incorporation of appropriate general Acts with,
421.

Secretary for Scotland, powers and duties of, 310—318, 322.

power of, to make Orders under other Acts
preserved, 322.

substituted Bills, Standing Orders as to, 414.

petitions in respect of, 415.

D. *Light Railways Act*, 1896,

application of Act to, with modifications, 518.

arbitrations under Act, in, 498, 518.

costs of, 538.

Clauses Acts defined for, 520, 522.

councils defined for purposes of Act for, 518, 521.

expenses of, how to be defrayed in, 519, 522.

deposit of documents, &c. with Secretary for Scotland on application
for Orders, 528.

district committees, powers of, in relation to applications for Orders,
520, 521.

joint applications for Orders in, 520, 521.

Lands Clauses Acts defined for, 520, 521.

Local Government Acts defined for, 521.

rating of light railways in, 521, 522.

Secretary for Scotland, powers of, 518.

deposit of documents, &c. with, on applica-
tion for Orders, 528.

SEA. *See* CROWN; FORESHORE.

SECTIONS. *See* DEPOSITS, PLANS AND SECTIONS.

SERVANTS. *See* CONDUCTORS OF CARRIAGES; DRIVERS OF CARRIAGES;
MASTER AND SERVANT.

SERVICE OF CARS. *See also* WORKMEN'S TICKETS AND TRAINS.

daily service ordered by Provisional Order, 439.

light railways on, 610.

penalty for insufficient, 610.

SEWERS AND SEWER AUTHORITIES,

access to sewers and drains and power to lay lateral and private drains
without consent of promoters, 429, 564, 608.

expenses of sewer authorities to be paid by promoters, 153.

interference with sewers by promoters, 153, 154, 564, 607.

SEWERS AND SEWER AUTHORITIES—*continued.*

locus standi of tramways against Bill to authorise sewers, 44.

manholes, provisions for alteration of, on making of light railway, 609.

protection for, in light railway Orders, 483, 485, 564, 607.

SHAREHOLDERS. *See* LIGHT RAILWAY COMPANY; WHARNCLIFFE MEETING.

SIDINGS,

construction of, for tramways, 430.

for light railways (Class B.), 590.

SIGNALS,

provisions in light railway Orders as to, 584.

SMOKE AND STEAM,

emission of, by-laws as to, 354, 434, 614.

non-consumption of smoke, 83.

SNOW,

light railway company to remove, 611.

nuisance by piling up snow not justified by promoters' statutory powers, 237.

tramway company liable to remove, 177.

SOLDIERS AND SAILORS. *See* DEFENCE, NATIONAL.SPECIAL ACTS FOR TRAMWAYS. *See also* STANDING ORDERS OF PARLIAMENT.

advantages and disadvantages of procedure by, 9, 10.

incorporation of Parts II. and III. of Tramways Act, 1870. with, 125.

meaning of "Special Act" in Tramways Act, 1870, Parts II. and III., 125.

petitions against Bills. *See* LOCUS STANDI.

Scotland, when necessary in lieu of Provisional Order in, 311, 312.

SPECIAL ADVANCES. *See* TREASURY.

SPEED,

by-laws may be made as to, 195, 617.

by-laws not to sanction higher speed than that permitted by Board of Trade Regulations, 434, 617.

facing-points, through, 353, 365.

indicators to be affixed to cable cars, 369.

to electric cars, 363.

limits of, for light railways, 5, 485, 568.

locus standi in respect of possible increase of speed, 36.

mechanical tramways and light railways (Class B.), on, regulations as to, 353, 354, 365, 614.

STAGE CARRIAGE ACTS,

application of, to carriage on tramways and light railways (Class B.), 88, 160, 161.

STAMPS,

conveyance of tramways, on, 187.

lease of tramways, on, 119.

STANDARDS. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

STANDING ORDERS OF PARLIAMENT,

- abandonment Bills, notices on promotion of, 387.
 - reports of Board of Trade and Committee on, 411.
- amalgamation and working agreements, terms of, to be specified in Bill, 411.
- Board of Trade, deposit of plans, &c., Bill, and tramway map with, 388, 390.
- book of reference, form of, 394.
- companies, promotion of Bills by. *See* WHARNCLIFFE MEETING.
- completion, time to be permitted for, 410.
- compulsory powers may be prohibited, where railway or tramway Bill to serve private interest, 410.
- consents of directors and proprietors, 397.
 - of local authorities, 3, 97, 387.
 - proofs of, 404.
- deposits, application of, when line not completed in whole or in part, 407, 408, 409.
 - of declaration in lieu of money, where permitted, 395, 396.
 - of sum equal to five per cent. of estimate, 395.
 - penalty in lieu of, 406, 410.
- deposit of documents, &c.,
 - of Bill in the Parliament office, 389.
 - of Bill at public offices, 390.
 - of Bill altered on passage through Parliament, 396.
 - of Bill brought from other House, 396.
 - of Bill and declaration in the Private Bill Office, 389.
 - Board of Trade, of plans, &c., Bill, and tramway map with, 388, 390.
 - of estimate, declarations and lists of owners, &c., on or before 31st December, 391.
 - houses of labouring class, of statement as to, 392.
 - of plans, &c., and tramway map, 388, 389.
 - Parliamentary Documents Deposit Act, 1837..100.
- estimate, form of, 391, 395.
- Examiners, dissenting proprietors and members may be heard before, 402.
 - memorials complaining of non-compliance with Standing Orders to, 401.
- extension of time, what allowed, 410.
- frontagers, dissent of, under nine feet six inches rule, 103, 104.
- general Acts, present and future, to apply to railways and tramways, 412.
- houses of labouring class, deposit of statement as to, 392.
- length of railway and tramway to be specified in Bill, 412.
- level crossings, restrictions on, 405.
- line of tramway to be specified in advertisements, 384.
- local authority, Bills of, authorising the borrowing of money, 413.
 - limitations on the constructing, leasing or working of tramways outside district by, 412.
- locus standi.* *See also* LOCUS STANDI.
 - Chambers of Commerce, &c., of, 403.
 - competition, on ground of, 403.
 - county councils, of, 403, 404.
 - against tramway Bills. 404.
 - dissentient proprietors and members, of, before Committees, 403.
 - before Examiners, 402.
 - Examiners, before, 401.
 - frontagers, of, 404.

STANDING ORDERS OF PARLIAMENT—*continued.*

locus standi—*continued.*

inhabitants, of, 403.

local authorities, of, 403.

London, deposit of documents, &c., in case of Bills relating to. *See* LONDON.

mortgages under tramway and railway Bills restricted, 405.

notices of Bill altered during passage through Parliament, 396, 415.

to owners, frontagers, &c., 100, 103, 386, 397, 415.

notices by advertisement, contents of, 383.

publication of, 384.

penalty in lieu of deposit, 406, 410.

petitions against private Bills, Standing Orders governing, 402.

plans, form of, 393.

powers to lapse on non-completion within period limited, 409, 410.

Private Legislation Procedure (Scotland) Act, 1899, substituted Bills under, 414.

protective clauses, notices of Bill to alter, 387.

Provisional Order Confirmation Bills, procedure on. *See* CONFIRMATION.

sections, form of, 394.

street, meaning of, in, 23.

tolls, future alteration of maximum, to apply to railways and tramways, 412.

report of Committee on Bill to levy increased. 404.

tramroad Bills, Standing Orders as to, 411.

Wharnccliffe meetings. *See* WHARNCLIFFE MEETING.

working agreements, terms of, to be specified in Bill, 411.

STATIONS. *See also* STOPPING OF TRAMWAY AND LIGHT RAILWAY CARRIAGES AND ENGINES.

platforms, when to be provided on light railway of Class A, 584.

shelter at stopping places need not generally be provided, 484, 584.

waiting rooms sometimes to be provided, 484, 610.

STATUTES. *See* INCORPORATION OF ACTS: STATUTORY POWERS.

STATUTE-LABOUR ROADS,

tramways on, under Tramways (Scotland) Act, 1861, 283.

STATUTORY POWERS.

delegation by lease or otherwise of, 120, 191.

discontinuance and insolvency, on, cesser of, 170, 173, 621, 622.

exercise of, must be *ex æquo et bono*, 196, 225, 266.

restrained, if improper, 131, 227.

land acquired under improper user of, 227.

lapse of, at end of period limited by Act, 409, 410.

nuisance, how far justified by, 225, 226, 232, 234.

promoters of, extent of. *See* PROMOTERS.

protection afforded by, 224, 260.

in cases of electrical interference, 236, 238.

purchase, effect of, on, 176, 184, 626.

remedies for misuse of, 225.

works, liability in respect of, when done under. *See* ACCIDENTS; WORKS.

STOPPING PLACES. *See* STATIONS.

STOPPING OF TRAMWAY AND LIGHT RAILWAY ENGINES AND CARRIAGES. *See also* STATIONS.

- by-laws as to stopping at certain points for mechanical tramways and light railways (Class B.), 355, 434, 614, 617.
- for electric tramways and light railways (Class B.), 367.
- at request of passengers, 375.
- on gradients and at intersection of roads, 375.
- impending danger, where, 354, 367, 434.
- limitation of stopping at certain places in case of light railways, 486.
- prohibited at certain points, 365.

STREETS. *See also* ROADS; ROAD AUTHORITIES.

- Light Railways Rules, word used in, 530, 532.
- meaning of, in Standing Order 135..23, 103.
- notices in, under Standing Orders, 386.
- under Tramways Rules, 326.
- traffic in. *See* TRAFFIC.

SUBSTRUCTURE. *See* RAILS.

SUNDAYS,

- fares on Sundays and holidays not to be increased, 440, 618.
- prohibition of Sunday traffic by by-laws, 200.
- Sunday Observance Acts do not apply to tramcars, 162.

SURFACE CONTACT SYSTEM. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

SUSPENSION OF TRAMWAY WORKS,

- Board of Trade's opinion final as to, 116.
- effect of, 116.
- evidence of, 116, 117.

TAXATION OF COSTS. *See* COSTS.

TAXES AND RATES. *See also* RATING.

- deduction to be made of, in estimating rateable value of tramway, 68, 75.
- lease of tramways, how to be borne under, 119.

TELEGRAPHS AND TELEPHONES,

- electrical interference with, by tramways and light railways, 235.
- locus standi* of telephone companies, 36.
- Postmaster-General, protection for telegraphic apparatus of, 290, 436, 569, 571, 618.
- roadside wastes, telegraph wires on, 618.
- Telegraph Acts, application of, to light railways, 88, 517, 518, 569, 572.
- to tramways, 436, 438.
- telephone company, clause for protection of, 555.
- underground apparatus, protection for, 148, 151, 606.
- wayleaves, clauses providing for payment of, by telephone company, 493, 555.

TEMPORARY TRAMWAYS AND LIGHT RAILWAYS,

- locus standi* against, 39.
- may be made when necessary in the opinion of the road authority, 431, 612.

THROUGH TRAFFIC. *See* TRAFFIC.

TICKETS. *See also* PASSENGERS; WORKMEN'S TRAINS AND TICKETS.

by-laws as to, how far valid, 201, 202, 213.

TIDAL WATERS. *See* CROWN; FORESHORE.

TIME, EXTENSION OF. *See* COMMENCEMENT; COMPLETION; COMPULSORY PURCHASE OF LAND; WORKS.

TOBACCO AND SNUFF,

sale of, in tramway and railway carriages, 87.

TOLLS,

by-laws as to payment of fares, validity and operation of, 201, 202.

definition of, 193.

demand of, by promoters, 193, 194, 441, 619.

goods, for. *See* GOODS TRAFFIC.

licenses of tramways, provisions as to tolls payable by, 166, 167, 168, 169.

light railway Orders, fixed by, 574, 575, 618, 619, 633.

list of, passenger fares to be exhibited inside and outside on tramways, 193, 194.

inside on light railways (Class B.), 618.

merchandise, for. *See* GOODS TRAFFIC.

parcels, for small. *See* GOODS TRAFFIC.

passengers, for. *See* PASSENGER TRAFFIC.

payment of, method of, 193, 194, 441, 619.

recovery of, 256, 619.

revision of tolls by Parliament to apply to tramways and light railways, 412, 583, 632.

on representation by local authority or ratepayers, 441, 619.

statutes imposing, construction of, 194.

through tolls, agreements as to, 613.

under Regulation of Railways Act, 1868..83.

tramway Orders, Board of Trade may impose regulations as to, in, 106.
specified in, 106, 440, 441, 446.

user of light railway by other companies or persons, for, 619.

of railway or tramway by light railway company. for, 568, 612.

TOWN,

meaning of, in Tramways Act, 1870, s. 9..102.

TRAFFIC. *See also* GOODS TRAFFIC; OBSTRUCTION; PASSENGER TRAFFIC;
STOPPING OF TRAMWAY AND LIGHT RAILWAY ENGINES AND CARRIAGES;
TOLLS.

by-laws may be made as to tramways and light railways in relation to
street traffic, 195, 617.

clauses in Orders as to traffic, 439, 574, 618.

interruption of street traffic, by driver or conductor of car, 376.

of tramway or light railway traffic by public, 376.

by road authorities and
protected companies,
&c., 155, 563, 603.
605, 608.

injunction to restrain,
145.

regulation of street traffic not to be limited by tramway or light
railway, 263, 611.

TRAFFIC—*continued.*

- regulation of street traffic, statutes governing, 263.
- rule of the road, how affected by tramways, 263.
- Sunday and holiday traffic on tramways and light railways. *See* SUNDAYS.
- through traffic, 83, 613.

TRAILING CARRIAGES. *See* CARRIAGES.TRAMROADS. *See also* TRAMWAYS.

- conveyance of mails on. *See* POSTMASTER-GENERAL.
- Standing Orders relating to, 411.

TRAMWAYS,

- abandonment of. *See* ABANDONMENT.
- accidents on. *See* ACCIDENTS; CONTRACTORS; ELECTRICITY AND ELECTRICAL APPARATUS; MASTER AND SERVANT.
- accounts of, 83.
- amalgamation of. *See* WORKING AGREEMENTS.
- amending Orders for. *See* PROVISIONAL ORDERS UNDER TRAMWAYS ACT, 1870.
- animal power on, 160, 432.
- animal traffic on. *See* GOODS TRAFFIC.
- applications for Orders for. *See* APPLICATIONS.
- arbitrations in connection with. *See* ARBITRATION.
- arrest on. *See* ARREST.
- audit of accounts of. *See* AUDIT.
- bells on. *See* BELLS.
- bicycles and tricycles on. *See* PASSENGER TRAFFIC.
- Bills for. *See* SPECIAL ACTS FOR TRAMWAYS; STANDING ORDERS OF PARLIAMENT.
- Board of Trade, powers of, with regard to. *See* BOARD OF TRADE.
- brakes on. *See* BRAKES.
- bridges and culverts under or over. *See* BRIDGES AND CULVERTS.
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- cable traction on. *See* MECHANICAL POWER.
- canals and. *See* CANALS.
- carriages on. *See* CARRIAGES.
- commencement of. *See* COMMENCEMENT OF TRAMWAYS.
- compensation in respect of. *See* COMPENSATION.
- to servants of. *See* MASTER AND SERVANT.
- completion of. *See* COMPLETION.
- compulsory purchase of. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.
- compulsory purchase of land for. *See* COMPULSORY PURCHASE OF LAND.
- conductors of carriages on. *See* CONDUCTORS OF CARRIAGES.
- confirmation of Orders for. *See* CONFIRMATION.
- contractors for. *See* CONTRACTORS.
- costs in connection with. *See* COSTS.
- cross-over roads, power to make, 430.
- dangerous goods on. *See* DANGEROUS GOODS.
- defence, national, and, 85.
- definition of, 1, 5.
- deposits of money in connection with. *See* DEPOSITS.
- deposit of documents, &c. on applications for Orders for. *See* DEPOSIT OF DOCUMENTS, &c.
- deviations of, 430.

TRAMWAYS—*continued*.

- discontinuance of. *See* DISCONTINUANCE.
 drivers of carriages on. *See* DRIVERS OF CARRIAGES.
 easements, acquisition of, to lay down. *See* EASEMENTS.
 electricity, use of, on. *See* ELECTRICITY AND ELECTRICAL APPARATUS.
 electrical interference by. *See* ELECTRICITY AND ELECTRICAL APPARATUS;
 TELEGRAPHS AND TELEPHONES.
 electrical traction on, systems of. *See* ELECTRICITY AND ELECTRICAL
 APPARATUS.
 engines on. *See* ENGINES.
 expenses in connection with. *See* COSTS; EXPENSES; FIES.
 fares on. *See* PASSENGERS; PASSENGER TRAFFIC; TOLLS.
 franchise to lay down, nature of, 184, 259, 261.
 frontagers and. *See* FRONTAGERS; NINE FEET SIX INCHES RULE.
 furious driving. *See* DRIVERS OF CARRIAGES.
 gas, water, &c. companies and. *See* GAS, WATER, &c. COMPANIES.
 gauge of. *See* GAUGE.
 general Acts, mention of, in, 2.
 generating station for. *See* ELECTRICITY AND ELECTRICAL APPARATUS.
 goods traffic on. *See* GOODS TRAFFIC.
 Highway Acts and. *See* HIGHWAYS.
 history of, 1.
 improvement of land and. *See* IMPROVEMENT OF LAND.
 insolvency of promoters of. *See* INSOLVENCY OF PROMOTERS.
 Ireland, in. *See* IRELAND.
 junctions of, with tramways and light railways. *See* JUNCTIONS.
 lands for. *See* COMPULSORY PURCHASE OF LAND; LANDS.
 leases of. *See* LEASES.
 level crossings of and over. *See* LEVEL CROSSINGS.
 licences to use. *See* LICENCES TO USE TRAMWAYS.
 licensing of cars and drivers on. *See* HACKNEY CARRIAGES.
 lights on. *See* LIGHTS.
 light railways and, 8, 451.
 local authorities and. *See* LOCAL AUTHORITIES.
 local inquiries in relation to. *See* LOCAL INQUIRIES.
 Locomotives on Highway Acts and, 165.
locus standi of, against tramway Bills, 39.
 competition, on ground of, 39.
 interest sufficient to justify, 39, 40.
 interference, on ground of physical, 40.
 lease, against Bill to authorise, 41, 42.
 purchase, against Bill to authorise, 41, 42.
 working by local authority, against Bill to
 authorise, 41, 42.
 against railway Bills, 42.
 competition, on ground of, 42.
 interference, on ground of physical, 43.
 against various Bills, 44.
 London, in. *See* LONDON.
 luggage on. *See* PASSENGERS; PASSENGER TRAFFIC.
 mails on. *See* POSTMASTER-GENERAL.
 mechanical power on. *See* MECHANICAL POWER.
 military tramways. *See* MILITARY TRAMWAYS.
 mines and minerals under, 260, 261.
 mortgages of. *See* MORTGAGES.
 naval tramways. *See* NAVAL TRAMWAYS.

TRAMWAYS—*continued.*

- notices as to. *See* NOTICES.
 - nuisances in connection with. *See* NUISANCE.
 - obstruction of or interference with. *See* OBSTRUCTION.
 - opening of. *See* OPENING.
 - passengers on. *See* PASSENGERS; PASSENGER TRAFFIC.
 - passing places on, 365, 430.
 - penalties as to. *See* PENALTIES.
 - promoters of. *See* PROMOTERS; STATUTORY POWERS.
 - Provisional Orders for. *See* PROVISIONAL ORDERS UNDER TRAMWAYS ACT, 1870.
 - public, right of, to pass over, 264.
 - throwing open to, of, 118, 119.
 - purchase of. *See* PURCHASE OF TRAMWAYS AND LIGHT RAILWAYS.
 - rails of. *See* RAILS.
 - railways and. *See* RAILWAYS.
 - rates on. *See* TOLLS.
 - ratepayers and. *See* RATEPAYERS.
 - rating of. *See* RATING.
 - regulations for. *See* BY-LAWS; ELECTRICITY AND ELECTRICAL APPARATUS; MECHANICAL POWER.
 - roads and road authorities and. *See* ROADS; ROAD AUTHORITIES.
 - rules as to. *See* RULES.
 - running powers over. *See* RUNNING POWERS.
 - Scotland, in. *See* SCOTLAND.
 - sewers and. *See* SEWERS AND SEWER AUTHORITIES.
 - sidings on, 430.
 - snow on. *See* SNOW.
 - speed of. *See* SPEED.
 - Stage Carriage Acts and, 88, 160, 161.
 - Standing Orders as to. *See* STANDING ORDERS OF PARLIAMENT.
 - statutory provisions relating to, miscellaneous, 83.
 - stopping of engines and carriages on. *See* STOPPING OF TRAMWAY AND LIGHT RAILWAY ENGINES AND CARRIAGES.
 - Sunday and holiday traffic on. *See* SUNDAYS.
 - suspension of works of. *See* SUSPENSION OF WORKS.
 - temporary tramways. *See* TEMPORARY TRAMWAYS AND LIGHT RAILWAYS.
 - tobacco and snuff, sale of, on, 87.
 - tolls on. *See* TOLLS.
 - traffic, relation of, to ordinary. *See* TRAFFIC.
 - unauthorised, a nuisance, 2, 91.
 - undertakings. *See* UNDERTAKING.
 - winding-up of. *See* WINDING-UP.
 - works of. *See* WORKS.
 - working agreements, as to. *See* WORKING AGREEMENTS.
 - workmen's cars and tickets on, 378, 440.
- TRAMWAY BILLS. *See* CONFIRMATION; SPECIAL ACTS FOR TRAMWAYS; STANDING ORDERS OF PARLIAMENT.
- TRAMWAYS (SCOTLAND) ACT, 1861. *See* SCOTLAND.
- TREASURY,
- Crown lands, consent of Treasury required to conveyance for purposes of light railway, 509.
 - deposit of documents, &c. with, under Light Railway Rules, 528.
 - under Standing Orders, 390.
 - fees under Light Railways Act, 1896, to be fixed by, on recommendation of Board of Trade, 500.
 - fees under Private Legislation Procedure (Scotland) Act, 1899, to be fixed with consent of, 321.

TREASURY—*continued*.

- light railway Orders, settlement of, deferred by Commissioners pending Treasury assistance, 461.
- loans to light railway companies by, conditions, rate of interest, &c., 457.
 - amount which may be so lent, 462.
 - borrowing from and repayment to National Debt Commissioners, 462.
- special advances to light railway companies by, 7, 459, 549.
 - amount which may be so advanced, 462, 463.
 - assessment to rates in case of, 460, 461, 580.
 - conditions of, 459, 460, 461, 549.
 - free grant or loan or both, may be by way of, 460.
 - National Debt Commissioners may lend for, 462.
 - rate of interest on loans, 462.
 - recital as to, 549.

TREES,

- removal of dangerous, 83.

TROLLEY SYSTEM, POLES AND WIRES. *See* ELECTRICITY AND ELECTRICAL APPARATUS.**TURNPIKE ROADS,**

- provisions as to, in Tramways Act, 1870, repealed, 259, 260.
- tramways on, under Tramways (Scotland) Act, 1861, 280.

"TWO-THIRDS RULE." *See* LOCAL AUTHORITIES: ROAD AUTHORITIES.**UNDERTAKING,**

- capital expenditure on separate undertakings, 180.
- claims against separate undertakings, 180.
- combination of undertakings by Provisional Order, 180, 427.
- defined in Provisional Order, 424.
- meaning of, in case of tramways, 178, 182.
- purchase of separate tramway undertakings, 180, 191.
- rating of separate undertakings, 64.

VALUE,

- meaning of, in Tramways Act, 1870, s. 43, 182.

WAITING ROOMS. *See* STATIONS.**WAR DEPARTMENT.** *See* CROWN.**WASTES, ROADSIDE.** *See* ROADSIDE WASTES.**WATER COMPANIES.** *See* GAS, WATER, &C. COMPANIES.**WHARNCLIFFE MEETING,**

- consent of proprietors and shareholders to be proved, where sum to be raised, &c. in aid of undertaking of another company, 400.
- consent of persons named as proprietors, &c. in Bill to be proved, 401.
- dissentient proprietors and shareholders, *locus standi* of, 38, 402, 403.
- light railway Orders, certificate of assent of members required on application for, 535.
- meeting required, where Bill proposes to do certain things, 399, 400.
 - where promotion is by existing statutory company, 397.
 - where promotion is by registered company, 398.

WHISTLE. *See* BELL.**WINDING-UP,**

- circumstances under which a tramway or other statutory company will be wound up, 174.
- debenture-holders not entitled to sale of undertaking, 174.
- deposits, application of, on winding-up. *See* DEPOSITS.
- general railway Acts, under, 496.
- insolvency of promoters. *See* INSOLVENCY OF PROMOTERS.
- registered company, of, 173.
- sale of undertaking, 174.
- unregistered company, of, 173.

WIRES. *See* ELECTRICITY AND ELECTRICAL APPARATUS.

WORKING AGREEMENTS. *See also* RUNNING POWERS.

Bills for amalgamation, working agreements, &c. shall specify terms thereof, 411.

leases. *See* LEASES.

light railway Orders may authorise, 479, 487.

clauses in, as to working agreements with other railways, 568, 569.

with tramways, 612.

local authorities may make agreements for working light railways, 455, 456.

working of tramways outside district by, limited by Standing Orders, 412.

purchase, power of compulsory, not to be affected by, 613.

through traffic on light railways, agreements as to, 613.

tramway Orders, clause in, authorising, 442.

Treasury grant, agreement by existing railway to work light railway a condition precedent to, 459, 460, 549.

WORKING CLASSES, HOUSING OF THE. *See* HOUSING OF THE WORKING CLASSES.

WORKMEN'S COMPENSATION. *See* MASTER AND SERVANT.

WORKMEN'S TICKETS AND TRAINS,

general railway Acts, under, 496.

light railways, provisions as to, on, 487, 619.

tramways, workmen's cars ordered to be run on, 440.

unauthorised use of workman's ticket, by-law forbidding, 378.

WORKS,

accidents due to. *See* ACCIDENTS.

amending Orders authorising alterations of and additions to, on light railways, 515.

on tramways, 114, 115.

approval of plan and statement of light railway works by Board of Trade and road authority, 594, 596.

bridges and culverts, on. *See* BRIDGES AND CULVERTS.

construction, clauses in Orders as to, of light railways, 479, 482, 556, 592.
of tramways, 426.

highways, special duty of promoters in relation to works on, 230.

liability for damage caused by statutory works, in breach of covenant for quiet enjoyment, 228.

on highways, 238, 230.

night shifts on light railway works, 485.

powers of light railway company to construct works limited to district named in order, 465.

special duty of promoters in relation to works, in what cases, 230.

superintendence of light railway works by road authorities, special provisions for, 484.

time limited for construction of works by light railway Orders, 479, 489, 556, 592.

by Tramways Act, 1870..115.

extension of, by Board of Trade under light railway Orders, 556, 592.

under Tramways Act, 1870..115, 117.

by amending light railway Orders, 516, 642.

by amending tramway Orders, 114.

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